

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

76 5019
UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

In the Matter of
INVESTORS FUNDING CORPORATION OF
NEW YORK, et al.,

Debtors,

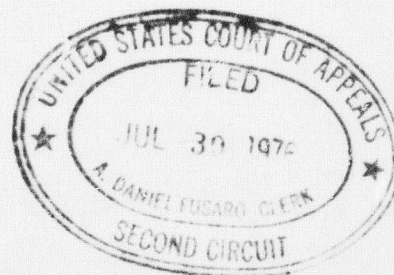
JAYTEE-PENNDDEL COMPANY,

Appellant.

Appeal from an Order of the United States
District Court for the Southern District
of New York

S U P P L E M E N T A L A P P E N D I X

WEIL, GOTSHAL & MANGES
Attorneys for Appellee
767 Fifth Avenue
New York, New York 10022
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CONTENTS

Order Restraining Creditors	
(General Order No. 10)	1
Order to Show Cause	6
Trustee's Application	9
Exhibits to Trustee's Application	22
Affidavit in Opposition	38
Transcript of October 20, 1975	44
Transcript of January 19, 1976	70

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
IN THE MATTER

OF

: ORDER NO. 10

INVESTORS FUNDING CORPORATION OF NEW
YORKI F C COLLATERAL CORPORATION
ALWICK REALTY CORP.

BALCO PROPERTIES CORPORATION

CH # 4 INCORPORATED

CH # 16 INCORPORATED

DENGRO REALTY CORP.

DODVI REALTY CORP.

8484 16TH STREET CORPORATION

11215/35 OAK LEAF DRIVE CORPORATION

53 EAST 93RD STREET CORPORATION

515 WEST END AVENUE CORPORATION

5674 ALICE AVENUE CORPORATION

FORVIL REALTY CORP.

417 EAST 57TH STREET REALTY CORPORATION

1470 PALISADE AVENUE CORPORATION

HERNE REALTY CORP.

IFC REALTY SERVICES CORPORATION

IFC SECURITIES CORPORATION

IFC SERRAMONTE ESTATES CORPORATION

INVESCO HOLDING CORPORATION

INVESCO MANHATTAN CORPORATION

9780 AIRPORT BOULEVARD CORPORATION

PARKEN REALTY CORP.

RETFORD REALTY CORP.

SKIPTON REALTY CORP.

300 EAST 95TH STREET CORPORATION

301 EAST 92ND STREET CORPORATION

320 WEST END AVENUE CORPORATION

3103 75TH AVENUE CORPORATION

2039 BROADWAY CORPORATION

2141 LEMOINE AVENUE CORPORATION

200 EAST 96TH STREET CORPORATION

VENTRY REALTY CORP.

: In Proceedings for
the Reorganization
: of Corporations
Under Chapter X of
: the Bankruptcy Act: Nos. 74 B 1454,
1455 and
: 74 B 1511 -
74 B 1542
: inclusive

Debtors.

-----x
ORDER RESTRAINING CREDITORSWHEREAS, Investors Funding Corporation of New York
("Funding") and I F C Collateral Corporation ("Collateral")

filed petitions under Chapter X of the Bankruptcy Act on October 21, 1974 and said petitions were approved by order of this court entered on October 23, 1974; and

WHEREAS, thereafter the other debtors filed a consolidated petition under Chapter X of the Bankruptcy Act on October 30, 1974 which was approved by order of this court entered on October 30, 1974; and

WHEREAS, all of said proceedings were consolidated for procedural purposes under the above caption pursuant to order of this court entered on October 30, 1974; and

WHEREAS, actions have been commenced against various of the debtors and other actions have been threatened against various of the debtors, other than actions which are automatically stayed pursuant to the provisions of §148 of the Bankruptcy Act, 11 USC §548; and

WHEREAS, utilities have threatened to cut off, disconnect and terminate service unless pre-Chapter obligations are paid and substantial deposits are made, which deposits are in many instances excessive and the terms for payment thereof unreasonable; and

WHEREAS, it appears to the satisfaction of this court that all actions against the debtors, or any of them,

and all interference with the orderly operation of the business and properties of said debtors must be stayed in order to preserve and protect the assets of these estates from being irreparably injured and damaged; and

WHEREAS, such injury and damage may well result before a hearing can be held or notice given to existing plaintiffs in actions commenced, or those who may commence actions, or to utilities, and

WHEREAS, this court has exclusive jurisdiction over the debtors and their property, wherever located, pursuant to §111 of the Bankruptcy Act, 11 USC §511 and has the jurisdiction to require receivers appointed in proceedings not under this Act to turn over all property of the debtors in their possession as set forth under §2a(21) of the Bankruptcy Act, 11 USC §11a(21),

NOW, therefore, upon the foregoing and all the proceedings heretofore had herein and sufficient cause appearing therefor, it is on motion of Levin & Weintraub, attorneys for the debtors,

ORDERED:

1. That until final decree or the further order of this court, all creditors and stockholders, and all sheriffs, marshals and other officers, and their respective attorneys, servants, agents and employees, and all other persons, firms and corporations be, and they hereby are, jointly and severally, enjoined and stayed from commencing

or continuing any action at law or suit or proceeding in equity against said debtors in any court, or from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or enforcing a lien upon any property, including but not limited to mortgages receivables, owned by or in the possession of the said debtors and from doing any act or thing whatsoever to interfere with the possession or management by said debtors of the property and assets of the within estates, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this court over said debtors and their respective properties; and all persons, firms or corporations owning any lands or buildings occupied by said debtors or wherein is contained any property of the within estates be, and they hereby are, jointly and severally, stayed, pending the further order of this court, from removing or interfering with any such property, and the plaintiffs and petitioners in any suits, actions or proceedings and their respective attorneys, servants, agents and employees be, and they hereby are, enjoined and restrained from taking any further actions or steps in said actions, suits or proceedings against the debtors.

2. That all persons, firms and corporations be, and they hereby are, enjoined from disturbing, interfering

with, cutting off or disconnecting the furnishing of gas, telephone service, heat, electrical service, water supply or any other utility of like kind furnished to said debtors, until further order of this court.

3. That any and all receivers appointed in proceedings not under the Bankruptcy Act are jointly and severally directed to deliver any properties of the debtors, or any of them, in their possession to such respective debtor and to account to this court for the disposition by them of any property of the debtors which may have come into their possession and said receivers are jointly and severally stayed from any further interference with the operation of the business or properties of said debtors, including but not limited to any attempt to collect rental income generated by said properties; and all tenants of said properties are authorized and directed to pay all rent to the debtors herein.

/s/ DAVID N. EDELSTEIN
Chief United States District Judge

Dated: New York, New York
October 30, 1974

CONSENTED TO:*

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for The Chase Manhattan Bank, N.A.

By: /s/ JOHN J. JEROME

*This consent is without prejudice to The Chase Manhattan Bank, N.A., as agent for itself and other banks, making application to this court for leave to implement any and all rights and remedies which it may have in respect of security held by it as collateral for loans to the debtors.

Order To Show Cause

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN THE MATTER :

OF :

INVESTORS FUNDING CORPORATION OF NEW YORK	:	In Proceedings for the Reorganization of Corporations Under Chapter X of the Bankruptcy Act
I F C COLLATERAL CORPORATION	:	
ALWICK REALTY CORP.	:	
BALCO PROPERTIES CORPORATION	:	
CH # 4 INCORPORATED	:	
CH # 16 INCORPORATED	:	
DENGRO REALTY CORP.	:	
DODVI REALTY CORP.	:	Nos. 74 B 1454, 1455 and
8484 16TH STREET CORPORATION	:	74 B 1511 -
11215/35 OAK LEAF DRIVE CORPORATION	:	74 B 1542
53 EAST 93RD STREET CORPORATION	:	inclusive
515 WEST END AVENUE CORPORATION	:	
5674 ALICE AVENUE CORPORATION	:	
FORVIL REALTY CORP.	:	DBB
417 EAST 57TH STREET REALTY CORPORATION	:	
1470 PALISADE AVENUE CORPORATION	:	
HERNE REALTY CORP.	:	
IFC REALTY SERVICES CORPORATION	:	
IFC SECURITIES CORPORATION	:	
IFC SERRAMONTE ESTATES CORPORATION	:	
INVESCO HOLDING CORPORATION	:	
INVESCO MANHATTAN CORPORATION	:	
9780 AIRPORT BOULEVARD CORPORATION	:	
PARKEN REALTY CORP.	:	
RETFORD REALTY CORP.	:	
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3103 75TH AVENUE CORPORATION	:	
2039 BROADWAY CORPORATION	:	
2141 LEMOINE AVENUE CORPORATION	:	
200 EAST 96TH STREET CORPORATION	:	
VENTRY REALTY CORP.	:	

Debtors. :

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TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FIXING HEARING DATE ON TRUSTEE'S APPLICATION FOR AN ORDER (A) ENJOINING AND STAYING COMMENCEMENT OR CONTINUATION OF ANY SUITS AGAINST TRUSTEE BY JAYTEE-PENNDDEL COMPANY, (B) AUTHORIZING TRUSTEE TO COMMENCE FORECLOSURE SUIT, (C) AUTHORIZING EMPLOYMENT OF SPECIAL COUNSEL THEREFOR, AND (D) REQUIRING JAYTEE-PENNDDEL TO RAISE IN SUCH FORECLOSURE SUIT ALL ITS CLAIMS OR DEFENSES

Order To Show Cause

[7]

Upon the annexed application of James Bloor, as Reorganization Trustee of the above-named debtors, dated August 12^m, 1975, and the annexed affidavit of Robert Valimont, a member of the firm of Power, Bowen & Valimont, dated August 6, 1975, and no adverse interest having been represented, and sufficient cause appearing therefor, it is

ORDERED, that all interested parties show cause before this Court in Room 1505 of the United States Courthouse, Foley Square, New York, New York on the 8^m day of September, 1975, at 2:30 o'clock in the ^{after} noon of that day, or as soon thereafter as counsel can be heard, WHY: (a) Jaytee-Pennndel Company ("Jaytee-Pennndel") and its attorneys should not be enjoined and stayed from the commencement or continuation of any pending or contemplated suits, actions or proceedings against the Trustee; (b) the Trustee should not be authorized to commence a foreclosure suit in Pennsylvania against Jaytee-Pennndel; (c) the Trustee should not be authorized to employ and appoint the firm of Power, Bowen & Valimont, as special counsel therefor; (d) Jaytee-Pennndel should not be required to raise in the Pennsylvania foreclosure proceedings any claims or defenses Jaytee-Pennndel may have against the Trustee or any of the above-named debtors; and (e) this Court should not grant to the Trustee such other and further relief as may be just and proper under the circumstances; and it is further

ORDERED, that pending a hearing on the aforesaid application, Jaytee-Pennndel and its attorneys, servants, agents and employees be, and they hereby are, restrained and

enjoined from continuing the prosecution of the suit against the Trustee now pending in the Supreme Court of the State of New York, County of Rockland, as more fully described in the application; and it is further

ORDERED, that the security provision of Fed. R. Civ. P. 65(c) be, and it hereby is, waived, and it is further

ORDERED, that service of a copy of this Order and the application upon which it is based, upon the Securities and Exchange Commission, 26 Federal Plaza, New York, New York; The Chase Manhattan Bank, N.A., c/o Milbank, Tweed, Hadley & McCloy, One Chase Manhattan Plaza, New York, New York; The United States Trust Company, c/o Carter, Ledyard & Milburn, Two Wall Street, New York, New York; Republic National Life Insurance Company, c/o Winer, Neuburger & Sive, 425 Park Avenue, New York, New York; the debtors, c/o Levin & Weintraub, 225 Broadway, New York, New York; The IFC Debentureholders' Protective Committee, c/o Kronish, Lieb, Shainswit, Weiner & Hellman, 1345 Avenue of the Americas, New York, New York; and Jaytee-Pennadel, c/o Dennis G. Katz, Esq., 300 North Main Street, Spring Valley, New York, in person or by certified mail, return receipt requested, made on or before August 15, 1975 at 5:00 p.m., shall be deemed good and sufficient service hereof.

Dated: New York, New York
August 13th, 1975
at 12:30 p.m.

s/s Dudley B. Borsel
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER

OF

INVESTORS FUNDING CORPORATION OF NEW YORK	:	In Proceedings for the Reorganization
I F C COLLATERAL CORPORATION	:	of Corporations
ALWICK REALTY CORP.	:	Under Chapter X of
BALCO PROPERTIES CORPORATION	:	the Bankruptcy Act
CH # 4 INCORPORATED	:	
CH # 16 INCORPORATED	:	
DENGRO REALTY CORP.	:	
DODVI REALTY CORP.	:	Nos. 74 B 1454,
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2141 LEMOINE AVENUE CORPORATION	:	
200 EAST 96TH STREET CORPORATION	:	
VENTRY REALTY CORP.	:	

Debtors.

-----x

APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND AN ORDER (A) ENJOINING AND STAYING COMMENCEMENT OR CONTINUATION OF ANY SUITS AGAINST TRUSTEE BY JAYTEE-PENNDDEL COMPANY, (B) AUTHORIZING TRUSTEE TO COMMENCE FORECLOSURE SUIT, (C) AUTHORIZING EMPLOYMENT OF SPECIAL COUNSEL THEREFOR, AND (D) REQUIRING JAYTEE-PENNDDEL TO RAISE IN SUCH FORECLOSURE SUIT ALL ITS CLAIMS OR DEFENSES

TO THE HONORABLE DUDLEY B. BONSALE,
UNITED STATES DISTRICT JUDGE:

The application of James Bloor, as Reorganization Trustee of the above-named debtors, respectfully represents:

Background

1. Applicant is the Reorganization Trustee of the above-named debtor corporations, having been appointed pursuant to an order of this court dated November 1, 1974 (Order No. 11), and thereafter duly qualified and is now acting as Trustee.
2. These proceedings were commenced by the filing with this court on October 21, 1974, on behalf of Investors Funding Corporation of New York and IFC Collateral Corporation ("Collateral") of their respective voluntary petitions for reorganization under the provisions of Chapter X of the Bankruptcy Act. Thereafter, on October 30, 1974, the other thirty-two above-named corporations filed their joint consolidated petition for reorganization under the provisions of Chapter X of the Bankruptcy Act.
3. On October 30, 1974, this court entered an order (Order No. 10) enjoining and staying all persons from commencing or continuing any suits against the debtors.
4. The business of the debtor corporations consists, primarily, of the ownership, operation, management, purchase, sale, and leasing of commercial and residential properties located throughout the United States.

The Rockland County Suit

5. There is currently an action pending in the Supreme Court, State of New York, County of Rockland, designated as Index No. 3358/1975 (the "Rockland County suit"), brought by Jaytee-Pennadel Company ("Jaytee-Pennadel") against the Trustee and described more fully in paragraph "16" below. Jaytee-Pennadel had previously commenced an action in the same court, Index No. 2385/1975, in which the complaint was almost identical to that in the Rockland County suit, but in which Collateral rather than the Trustee was named as defendant. Upon being informed of Order No. 10 herein, Jaytee-Pennadel applied to this court for a modification of such order by application dated April 30, 1975. At the hearing upon such application, counsel for Jaytee-Pennadel asserted Jaytee-Pennadel's alleged right to sue the Trustee under 28 U.S.C. §959. No decision was rendered on Jaytee-Pennadel's application, and shortly thereafter the Rockland County suit was commenced.

The Property and the Mortgages

6. Jaytee-Pennadel is the owner of certain real estate and the buildings thereon known as the Pennaledge Gardens, located in Pennadel Borough, Bucks County, Pennsylvania and more fully described in Exhibit "1" attached hereto (the "Property"). Jaytee-Pennadel's ownership of the Property is subject to certain mortgages described below.

7. The Buffalo Savings Bank (the "Bank") is the holder of a first mortgage on the Property (the "First Mortgage"). Interest is payable on the First Mortgage at the rate of 6% per annum. Under the terms of the First Mortgage, the Bank is to receive monthly payments of \$9,166.67, to be applied to interest and amortization of the principal balance of the loan, and \$3,767.33 to be deposited in an escrow account for the payment of real estate taxes. The total monthly payment due to the Bank on the first of each month is thus \$12,934.00. The remaining principal balance due on the First Mortgage is approximately \$1,067,232.24.

8. Collateral is the holder of a "wrap-around" mortgage on the Property (the "Wrap-Around Mortgage"), which "wraps in" the First Mortgage. The remaining principal balance due on the Wrap-Around Mortgage is approximately \$1,482,592.16. Interest is payable on the Wrap-Around Mortgage at the rate of 7-3/4% per annum. Under the terms of the Wrap-Around Mortgage, Collateral is to receive from the owner of the Property monthly payments of \$11,664.00, to be applied to interest and amortization of the principal balance of the wrap-around loan, and monthly escrow payments of \$6,114.15, of which \$2,346.82 is to be deposited in an escrow account for the payment of insurance, water and sewer charges. The total monthly payment due to Collateral from Jaytee-Pennel on the first of each month is thus \$17,778.15.

As the wrap-around mortgagee, Collateral services the First Mortgage by forwarding to the Bank the monthly payments of \$12,934.00 due under the First Mortgage, as described in paragraph "7" above.

The Events Surrounding the
Rockland County Suit

9. On or about November 1, 1974, Jaytee-Pennadel sent its regular monthly payment of \$17,778.15 to Collateral. Such payment was received by Collateral on or about November 6, 1974. As a result of the confusion surrounding the events of the early part of November, 1974, when the Trustee had just assumed his duties of supervising the affairs of the above-named debtors, Collateral inadvertently failed to send the November payment of \$12,934.00 to the Bank until on or about November 18, 1974.

10. On or about November 15, 1974, Jaytee-Pennadel was informed by the Bank that the November payment on the First Mortgage had not yet been received. Jaytee-Pennadel sent \$13,451.36 to the Bank, which sum included the \$12,934.00 regular monthly payment for November, plus a 4% late charge of \$517.36.

11. Upon being advised by the Bank that Jaytee-Pennadel had already tendered the November 1974 payment on the First Mortgage, the Trustee requested that the Bank accept as the December payment thereon the \$12,934.00 that had been tendered by Collateral in November, as described in paragraph "9" above.

12. On or about December 5, 1974, the Bank returned to Collateral the \$12,934.00 payment described in paragraph "9" above, advising the Trustee that the Bank would decline to accept any future payments tendered by Collateral. Upon information and belief, the Bank has taken this position upon the urging of Jaytee-Penndel.

13. The Trustee has been informed that since November 1974, Jaytee-Penndel has sent directly to the Bank the monthly payments due under the First Mortgage. Such payments now total \$129,857.36.

14. Since November 1974 Jaytee-Penndel has failed to make any of the payments due to Collateral under the Wrap-Around Mortgage. Such overdue payments now total \$160,003.35.

15. Allowing Jaytee-Penndel full credit for the payments it has made directly to the Bank, there is now due and owing to Collateral under the Wrap-Around Mortgage the net amount of \$30,145.99, of which sum \$12,791.94 represents the amount overdue for interest and amortization, and \$17,354.05 represents the amount overdue for the escrow account.

16. On or about May 14, 1975, Jaytee-Penndel commenced the Rockland County suit. The complaint seeks, inter alia, a declaratory judgment that the Trustee "was in default" under the Wrap-Around Mortgage and that the court

"reform and re-cast" the Wrap-Around Mortgage so as to "unwrap" the underlying First Mortgage. A copy of the complaint is annexed hereto as Exhibit "2". The Trustee has answered in the Rockland County suit by denying the material allegations of the complaint and by asserting, inter alia, that Jaytee-Pennel has sued the Trustee without the requisite permission of this court.

The Rockland County Suit Should Be Stayed

17. If Jaytee-Pennel were to succeed in obtaining the relief it seeks in the Rockland County suit, there would not be a mere change in form, but rather there would be a substantial modification of Collateral's rights under the Wrap-Around Mortgage and a diminishment of the market value of Collateral's interest therein.

18. Counsel for Jaytee-Pennel has asserted that 28 U.S.C. § 959, which creates an exception to the general rule prohibiting suits against trustees without leave of the court, furnishes grounds for allowing the Rockland County suit. Applicant submits that section 959 does not provide any basis for allowing the prosecution of the Rockland County suit, as such suit is not "with respect to any of [the Trustee's] acts or transactions in carrying on business connected with" the debtors' property. Furthermore, while the Rockland County suit is nominally brought against the Trustee, its objective is to substantially alter the Wrap-Around Mortgage, which mortgage is property owned by Collateral, and thus the suit is in violation of Order No. 10 herein, described in paragraph "3" above.

19. Applicant submits that this court is empowered to enjoin and stay the continuation of the Rockland County suit and the commencement or continuation of any other suits by Jaytee-Pennndel against the Trustee under sections 2a(15) and 116(4) of the Bankruptcy Act, 11 U.S.C. §§ 11(a)(15) and 516(4). Applicant further submits that such an order would be in the best interest of the debtor's estate and its creditors.

The Trustee Should Be Authorized To
Commence a Foreclosure Suit

20. Jaytee-Pennndel has been in default under the Wrap-Around Mortgage since December 1, 1974, through its failure to make payments due thereunder, as described in paragraph "14" above. Applicant has demanded the overdue payments but Jaytee-Pennndel has refused to comply therewith. Accordingly, applicant must commence a plenary foreclosure action in Pennsylvania against Jaytee-Pennndel to enforce Collateral's rights under the Wrap-Around Mortgage. Since such an action will affect the ownership of real property located in Pennsylvania, it may not be maintained other than in that state. Applicant believes that the above-described claim for relief is meritorious. Applicant submits that such a foreclosure action is allowed under Chapter X Rule 10-610 and Bankruptcy Rule 610.

The Trustee Should Be Authorized To
Employ Special Counsel

21. The services of special counsel to prosecute the contemplated foreclosure proceedings are necessary for the protection of Collateral's investment and its interests under the Wrap-Around Mortgage. Accordingly, applicant requests authority to retain the law firm of Power, Bowen & Valimont of Doylestown, Pennsylvania as special counsel to prosecute the contemplated foreclosure proceedings. Said counsel have substantial experience with actions of this nature and have indicated a willingness to act as counsel for applicant in the contemplated action. An affidavit of Robert Valimont, a member of the firm of Power, Bowen & Valimont, sworn to August 6, 1975, attesting to that firm's disinterestedness and lack of connection with the debtors, the creditors, or any other party in interest herein, or their respective attorneys, is annexed hereto as Exhibit "3".

Jaytee-Pennadel Should Be Required To Raise
In The Foreclosure Suit All Its Claims or Defenses

22. Applicant submits that the venue of the Rockland County suit is improper since the subject matter of that suit is a mortgage on real property located in Pennsylvania. Applicant submits that it would be more efficient and economical for all concerned for all issues concerning the Wrap-Around Mortgage to be resolved in a single proceeding. Accordingly, applicant submits that Jaytee-Pennadel and its attorneys should be required to raise in the contemplated

Pennsylvania foreclosure proceedings any claims or defenses Jaytee-Pennndel may have against the Trustee or the debtors.

23. Applicant is proceeding by order to show cause and seeking a temporary restraining order because of the likelihood that he would suffer immediate and irreparable injury if required to continue his defense in the Rockland County suit. Jaytee-Pennndel has commenced discovery proceedings in that action. Although counsel for the applicant has advised counsel for Jaytee-Pennndel of the impropriety of continuing the Rockland County suit and that applicant's counsel would allow no further discovery pending the decision upon this application, Jaytee-Pennndel's counsel has stated his intention to continue prosecution of the Rockland County suit. Unless the relief sought herein is granted, applicant will be forced to litigate and relitigate the same or closely related and overlapping issues in three separate proceedings -- in this court, in Rockland County, and in Pennsylvania -- incurring duplicative expenses for counsel, risking inconsistent results, and subjecting applicant and his staff to the burdens of multiple litigation. Applicant wishes to prevent further needless and irrecoverable expenses on the part of the debtors, all to the detriment of the estate and the creditors. Accordingly, applicant requests that pending a final determination on the instant application, this court restrain and enjoin Jaytee-Pennndel and its attorneys from continuing the prosecution of the Rockland County suit.

24. Fed. R. Civ. P. 65(c) provides for the posting of security by an applicant upon the issuance of a restraining

order. Applicant submits that not only would said requirement in the proceedings herein result in the imposition of an unnecessary and undue burden upon Collateral's estate, but further, that said requirement is incompatible with the exigencies of the administration of Chapter X cases. Furthermore, Jaytee-Pennel will not suffer any irreparable harm by the issuance of the restraining order sought herein. Pursuant to Chapter X Rule 10-701(4) and Bankruptcy Rule 765, the requirement for posting of security may be waived by the court in both bankruptcy and Chapter X cases. Accordingly, applicant requests that the court exercise its discretion and waive any requirement for security.

25. As is set forth in the affidavit of Neal A. Schwarzfeld, Esq., who is associated with applicant's attorneys, Messrs. Weil, Gotshal & Manges, annexed hereto as Exhibit "4", Jaytee-Pennel has been notified of the instant application.

26. The Securities and Exchange Commission has appeared in these proceedings by its Regional Counsel, 26 Federal Plaza, New York, New York. The Chase Manhattan Bank, N.A. has appeared in these proceedings by its counsel, Milbank, Tweed, Hadley & McCloy, One Chase Manhattan Plaza, New York, New York. The United States Trust Company of New York has appeared in these proceedings by its counsel, Carter, Ledyard & Milburn, 2 Wall Street, New York, New York. The Debentureholders' Protective Committee has appeared in these proceedings by its counsel, Kronish, Lieb, Shainswit,

Weiner & Hellman, 1345 Avenue of the Americas, New York, New York. The Republic National Life Insurance Company has appeared in these proceedings by its counsel, Winer, Neuberger & Sive, 425 Park Avenue, New York, New York. The debtors have appeared in these proceedings by their counsel, Levin & Weintraub, 225 Broadway, New York, New York. Jaytee-Pennadel has appeared in these proceedings by its counsel, Dennis G. Katz, Esq., 300 North Main Street, Spring Valley, New York. Applicant proposes to give notice to all such persons by delivering a copy of any order entered on the application herein to each of them in the manner to be prescribed by the court.

27. No previous application for the relief sought herein has been made to this or to any other court.

WHEREFORE applicant respectfully prays that an order be entered (1) fixing the date, time and place of the hearing upon this application; (2) granting a temporary restraining order in the manner described herein; and (3) granting to him such other and further relief as to this court may seem just and proper.

Dated: New York, New York
August 12, 1975

/s/
JAMES BLOOR, as Trustee

WEIL, GOTSHAL & MANGES
and CHARLES SELIGSON
Attorneys for Trustee
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

/s/
By: Alan B. Miller
A Member of the Firm

Trustee's Application

[21]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, James Bloor, do hereby swear that the statements contained in the above application are true according to the best of my knowledge, information and belief.

/s/
JAMES BLOOR, as Trustee

Subscribed and sworn to before
me this 12 day of August, 1975.

/s/

Notary Public

DAVID C. UNGER
Notary Public, State of New York
No. 31-4600333
Qualified in New York County
Commission Expires March 30, 1976

Exhibits to Trustee's Application [22]

ALL THAT CERTAIN tract of land, situate in Penn del Borough, Bucks County, Pennsylvania, and described according to a survey and Plan thereof made for Milton Schwartz and Associates by Pickering, Corts and Summerson, Inc., Consulting Engineers and Surveyors, Langhorne, Pennsylvania, dated October 22nd, 1964 and last revised October 22nd, 1965 and bounded and described as follows, to wit:

BEGINNING at a point on the Southeasterly side of Lincoln Highway, U. S. Route #1 (70 feet wide at this point) which said point is also the point of intersection of the said Highway and the line dividing the Borough of Penn del and Middletown Township;

THENCE along said dividing line the three following courses and distances, viz: (1) South 16 degrees 26 minutes East 104.43 feet to a point on the Northwesterly side of Maple Street (private) (25 feet wide);

THENCE (2) North 70 degrees 42 minutes East along the said side of Maple Street aforesaid 51.50 feet to a point;

THENCE (3) South 29 degrees 46 minutes 40 seconds East and crossing the head of said Maple Street to aforesaid 513.57 feet to a point;

THENCE extending South 46 degrees 19 minutes West 178.45 feet to a point; a corner on the Northeasterly side of Linden Avenue (private) (35 feet wide);

THENCE extending along the said side thereof South 43 degrees 41 minutes East 58.57 feet to a point, a corner;

THENCE extending South 46 degrees 19 minutes West and crossing Linden Avenue aforesaid 160 feet to a point, a corner;

THENCE extending North 43 degrees 41 minutes West 52.40 feet to a point, a corner;

THENCE extending South 46 degrees 19 minutes West 125.00 feet to a point, a corner on the northeasterly side of Robbins Avenue (private) 35 feet wide;

THENCE extending along the said side thereof and crossing Monroe Street (private) (49.20 feet wide) North 43 degrees 41 minutes West 346.60 feet to a point on the Northwesterly side of Monroe Street aforesaid;

THENCE extending along the said side of Monroe Street aforesaid North 46 degrees 19 minutes East 250 feet to a point, a corner on the Southwesterly side of Linden Avenue aforesaid;

THENCE extending along the said side of Linden Avenue aforesaid North 43 degrees 41 minutes West 240.60 feet to a point on the Southeasterly side of said Lincoln Highway, U.S. Route #1, (50 feet wide at this point);

THENCE extending along the said Lincoln Highway aforesaid and crossing the bed of Linden Avenue aforesaid and also crossing the bed of Maple Street aforesaid the four following courses and distances, viz: (1) North 25 degrees 50 minutes East 15.05 feet to a point of curve;

THENCE (2) by a curve to the right in a Northeasterly direction having a radius of 663.16 feet for the arc distance of 318.26 feet to a point;

THENCE (3) on a radial line South 37 degrees 12 minutes East 10 feet to a point;

THENCE (4) by a curve to the right in a Northeasterly direction having a radius of 653.16 feet for the arc distance of 12.37 feet to a point, being the first mentioned point and place of beginning.

C 106—Summons with Notice, Blank Court,
Personal Service.

COPYRIGHT 1975 BY JAMES BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PL. AT BROADWAY, N. Y. C. 10004

SUPREME COURT STATE OF NEW YORK
COUNTY OF ROCKLAND

JAYTEE-PENNDDEL COMPANY,

Plaintiff

against

JAMES BLOOR, trustee in the reorganization of
IFC COLLATERAL CORPORATION under Chapter X
of the Federal Bankruptcy Act and
REALTY EQUITIES COUNTRYWIDE, INC.

Defendant

Index No.

Plaintiff designates
Rockland

County as the place of trial

The basis of the venue is
Plaintiff's place of
business

Summons with Notice

Plaintiff resides at 300 N Main St.
Spring Valley, NY

County of Rockland

To the above named Defendant S

You are hereby summoned to answer the complaint in this action and to serve a copy
of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's
Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days
after the service is complete if this summons is not personally delivered to you within the State of New York); and in
case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, May 14, 1975

Defendant's address: 630 Fifth Ave.; NYC, NY

375 Park Ave; NYC, NY respectively

Notice: The object of this action is reformation and
recasting of a mortgage; declaratory judgment
based on a breach of contract

~~XXXXXXXXXX~~

DENNIS G. KATZ

Attorney(s) for Plaintiff
Office and Post Office Address

300 N Main St..
Spring Valley, NY 10977

Upon your failure to appear, judgment will be taken against you by default for the ~~XXXXXXXXXX~~ relief
~~XXXXXXXXXX~~

demanded in the complaint.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
JAYTEE-PENNDLE COMPANY,

Plaintiff,

VERIFIED COMPLAINT

Index No.

-against-

JAMES BLOOR, trustee in the
reorganization of IFC COLLATERAL
CORPORATION under Chapter X of the
Federal Bankruptcy Act, and
REALTY EQUITIES COUNTRYWIDE, INC.,

Defendants.

-----X

Plaintiff, as and for its

Verified Complaint,

respectfully shows to this court and alleges as follows:

1. Plaintiff is a New York limited partnership having its principal office c/o Jaytee Equities, 300 N Main St., Spring Valley, NY

2. Upon information and belief, JAMES BLOOR maintains an office at 630 Fifth Ave., New York, NY and was appointed trustee for IFC COLLATERAL CORPORATION pursuant to a proceeding for the reorganization of IFC COLLATERAL CORPORATION, (IFC) debtor, under Chapter X of the Federal Bankruptcy Act on November 1, 1974

3. Upon information and belief, Realty Equities Countrywide, Inc. is a New York corporation having its principal place of business at 375 Park Ave., New York, N.Y..

4. On or about the 30th day of April 1974 the plaintiff purchased the Pennledge Apartments, located at 255 E. Lincoln Highway, Pennel (Bucks County), Pennsylvania, and continues to be such owner thereof in fee simple up to the present time.

5. On or about the 30th day of April 1974 and continuing up to the present time, the Pennledge Apartments is subject to a certain mortgage dated the 29th day of June 1972 between Pennledge Apartment Corp., as mortgagor, and Realty Equities Countrywide, Inc., as mortgagee, in the original amount of \$1,543,337.81 (hereinafter referred to as the "IFC Mortgage"), and recorded in Book 1846, at page 777 at the Office of the Bucks County Clerk.

6. The aforesaid IFC mortgage was assigned to IFC by Realty Equities Countrywide, Inc. and IFC has assumed all the obligations of Realty Equities Countrywide, Inc. under said mortgage.

7. On or about the 30th day of April 1974, the Buffalo Savings Bank, a New York corporation, was the holder of a first mortgage on the Pennledge Apartments in the reduced amount of \$1,125,991.92 (hereinafter referred to as the first mortgage) which first mortgage was and still is senior and prior to the IFC mortgage.

8. On or about the 30th day of April 1974 the reduced principal balance on the IFC mortgage was \$1,495,615.38.

9. The IFC mortgage is commonly referred to as a "wrap-around mortgage" and requires IFC, as mortgagee, to make all payments of principal, interest, deposits, taxes, water bills, sewer rents, and insurance premiums to the first mortgagee under the terms of the first mortgage, on the dates when due.

BEST COPY AVAILABLE

10. Plaintiff made monthly payments to IFC in full satisfaction of all the mortgagor's obligations under the IFC mortgage and duly performed all other conditions of said mortgage.

11. Upon information and belief, on or about the 21st day of October 1974 IFC filed a petition for reorganization under Chapter X of the Bankruptcy Act in the United States District Court, Southern District of New York, which petition was approved on the 23rd day of October 1974. Plaintiff learned of this after it had made the November payment to IFC.

12. Notwithstanding the performance on the part of the plaintiff, or its trustee, James Bloor, IFC wrongfully failed to make its November payment of \$12,334.22 and an additional 4% penalty for late payment, totaling \$12,451.36, to the Buffalo Savings Bank or its agents (as first mortgagor) when due. Plaintiff promptly notified IFC of its breach of contract at the time the payment to the Buffalo Savings Bank was due, and was specifically informed by IFC that it had sent out a check to the Buffalo Savings Bank.

13. Plaintiff immediately contacted the Buffalo Savings Bank, through its agents, and was informed that IFC did not send out a check. From November 11 through November 15, IFC and its trustee continually assured Plaintiff that the check had been signed and sent out, notwithstanding contrary details by the Buffalo Savings Bank that no such check had been received.

14. On or about the 15th day of November 1974 the Buffalo Savings Bank informed the plaintiff that unless the November payment was called to it within the day, it would declare a

and its trustee
default of the first mortgage. IFC stated to the plaintiff that
it would not cable the money. Because of IFC's failure to meet
its contractual obligations under the IFC mortgage, and because
the plaintiff's security had been endangered thereby, the plain-
tiff was forced to cable \$13,451.36 in November to Buffalo Savings
Bank to cure the default.

15. The Buffalo Savings Bank, through its agents, has
demanded that plaintiff cure the default and demanded that
plaintiff make future payments due the Buffalo Savings Bank di-
rectly to the agent of the Buffalo Savings Bank.

16. IFC and its trustee has failed to give adequate assurances of per-
formance, has failed to render a complete accounting of all
monies received from the plaintiff and has failed to return the
plaintiff's November payment made to IFC in November.

17. Upon information and belief, the defendant trustee of IFC has
defaulted in its obligations under the IFC mortgage in the
following respects:

A. It has failed to make monthly payments to the
first mortgagees when due.

B. It has failed to pay penalty charges for late
payments to the first mortgagees.

C. It has failed to provide adequate assurances
of performance to the plaintiff.

D. It has failed to render a satisfactory accounting
to the plaintiff.

E. It has become insolvent and can not meet its
obligations under the IFC mortgage, nor can it safe-
guard plaintiff's escrow funds.

F. It has caused the plaintiff's security in the first mortgage to become endangered and has increased the possibility that the first mortgage will be foreclosed.

G. It has called in to question the entire contractual relationship between the plaintiff and the defendant IFC.

18. By reason of a possible legal action on the part of the defendant ^{trustee of} IFC, the plaintiff is unable to sell or offer to sell the apartment free from possible foreclosure, believes that it may be subject to the hazard of legal proceedings and perhaps to claims for damages; and is without any remedy at law or in equity unless this court, by its judgment, declares the rights of the plaintiff and the defendants with respect to the IFC mortgage.

WHEREFORE the plaintiff demands judgment that this court declare and determine this controversy as follows:

A. That the court declare that the Buffalo Savings Bank now holds a first mortgage in the reduced principal amount of \$1,125,991.98 as of April 30, 1977; ^{trustee of}

B. That the court declare that the defendant IFC holds a second, subordinate mortgage in the reduced amount of \$369,623.40 as of April 30, 1977; ^{the trustee of}

C. That this court declare that IFC was in default under the IFC mortgage;

D. That this court declare that plaintiff may make interest and principal payments on the reduced principal amount of the IFC mortgage to ^{the trustee of} IFC in accordance with the interest terms of the original bond secured thereby, and that the total payments

made to the trustee of IFC not exceed the gross amount of payments otherwise due under the original IFC mortgage after taking into account amounts required to be paid to the holder of the first mortgage.

E. That the court reform and re-cast the IFC mortgage in accordance with the foregoing.

F. That this court issue such mandatory and prohibitory injunctions, orders and decrees as is necessary to carry out the aforesaid permanently and during the pendency of this action.

G. That this court grant the plaintiff such other, further and different relief as may seem just and proper, together with the costs and disbursements of this action.

DATED: May 14, 1975

DENNIS G. KATZ
Attorney for Plaintiff
300 N. Main St.
Spring Valley, New York 10977
914-356-2525

The undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation shows: deponent is

Check Applicable Box

the attorney(s) of record for
in the within action; deponent has read the foregoing
and knows the contents thereof; the same
true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief
and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF Rockland ss:

Check Applicable Box

☒ Individual Verification Emil Tauber being duly sworn, deposes and says: deponent
a partner of the ~~pat~~ plaintiff in the within action; deponent has read
the foregoing ~~complaint~~ and knows the contents thereof; the same is true to
deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as
to those matters deponent believes it to be true.

☐ Corporate Verification the of
a corporation, in the within action; deponent has read the
foregoing and knows the contents thereof; and the same
is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and
belief, and as to those matters deponent believes it to be true. This verification is made by deponent because
is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

May 14 1975

LEONARD G. KATZ
Notary Public for the State of New York
No. 4513573
Qualified in Rockland County
Commission Expires March 30, 1977.

The name signed must be printed beneath

Emil Tauber

STATE OF NEW YORK, COUNTY OF

being duly sworn, deposes and says: deponent is not a party to the action

is over 18 years of age and resides at

☐ Affidavit of Service By Mail On 19 deponent served the within
upon attorney(s) for in this action, at

Check Applicable Box

by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — office
depository under the exclusive care and custody of the United States Postal Service within the State of New York

☐ Affidavit of Personal Service On 19 at
deponent served the within upon

herein, by delivering a true copy thereof to h personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein

Sworn to before me on

19

The name signed must be printed beneath

TRUSTEE-PENNDDEL COMPANY,

Plaintiff,

-against-

JOHN BLOOR, trustee in the reorganization of
COLLATERAL CORPORATION under Chapter X
of the Federal Bankruptcy Act and
ALTY EQUITIES COUNTRYWIDE, INC.

Defendants.

summons and ~~verified~~ verified complaint

DENNIS G. KATZ

Attorney for Plaintiff

Office and Post Office Address, Telephone
300 N. Main Street — Room 312
Spring Valley, N. Y. 10977
(914) 356-2525

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Sir.— Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named Court, at
on

of which the within is a true copy will be presented for
one of the judges

19

at

M.

Dated,

Yours, etc.

DENNIS G. KATZ

Attorney for

Office and Post Office Address
300 N. Main Street — Room 312

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN THE MATTER

OF

INVESTORS FUNDING CORPORATION OF NEW
YORK

I F C COLLATERAL CORPORATION

ALWICK REALTY CORP.

BALCO PROPERTIES CORPORATION

CH # 4 INCORPORATED

CH # 16 INCORPORATED

DENGRO REALTY CORP.

DODVI REALTY CORP.

8484 16TH STREET CORPORATION

11215/35 OAK LEAF DRIVE CORPORATION

53 EAST 93RD STREET CORPORATION

515 WEST END AVENUE CORPORATION

5674 ALICE AVENUE CORPORATION

FORVIL REALTY CORP.

417 EAST 57TH STREET REALTY CORPORATION

1470 PALISADE AVENUE CORPORATION

HERNE REALTY CORP.

IFC REALTY SERVICES CORPORATION

IFC SECURITIES CORPORATION

IFC SERRAMONTE ESTATES CORPORATION

INVESCO HOLDING CORPORATION

INVESCO MANHATTAN CORPORATION

9780 AIRPORT BOULEVARD CORPORATION

PARKEN REALTY CORP.

RETFORD REALTY CORP.

SKIPTON REALTY CORP.

300 EAST 95TH STREET CORPORATION

301 EAST 92ND STREET CORPORATION

320 WEST END AVENUE CORPORATION

3103 75TH AVENUE CORPORATION

2039 BROADWAY CORPORATION

2141 LEMOINE AVENUE CORPORATION

200 EAST 96TH STREET CORPORATION

VENTRY REALTY CORP.

: In Proceedings for
the Reorganization
of Corporations
Under Chapter X of
the Bankruptcy Act

: Nos. 74 B 1454,
1455 and
74 B 1511 -
74 B 1542
inclusive

Debtors.

-----x
AFFIDAVIT OF SPECIAL COUNSEL

COMMONWEALTH OF)

PENNSYLVANIA) ss.:

COUNTY OF BUCKS)

ROBERT W. VALIMONT

, being duly sworn, deposes

and says:

1. He is an attorney duly admitted to practice before the courts of the Commonwealth of Pennsylvania.

2. He is a member of the law firm of Power, Bowen & Valimont, which maintains offices for the practice of law at 102 North Main Street, Doylestown, Pennsylvania.

3. To the best of his knowledge, neither deponent nor any member or associate of his law firm is a creditor or stockholder of any of the above-named debtors.

4. To the best of his knowledge, neither deponent nor any member or associate of his law firm is or was an underwriter of any of the outstanding securities of any of the above-named debtors, and within five (5) years prior to the date of the petitions herein, neither deponent nor any member or associate of his law firm was an underwriter of any of the securities of the above-named debtors.

5. To the best of his knowledge, neither deponent nor any other member or associate of his law firm is, and within two (2) years prior to the date of the filing of the petitions was, a director, officer or employee of any of the above-named debtors or of any underwriter described in paragraph 4 hereof, or the attorney for any of the above-named debtors or any such underwriter.

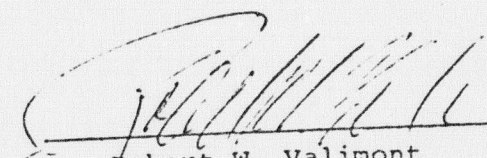
6. The matters in respect of which it is proposed with the deponent's firm to be retained are hereinafter described:

All matters dealing with a claim of IFC Collateral Corporation against Jaytee-Pennndel Co. in connection with a mortgage loan obligation on premises owned by Jaytee-Pennndel Co. in Bucks County, Pennsylvania.

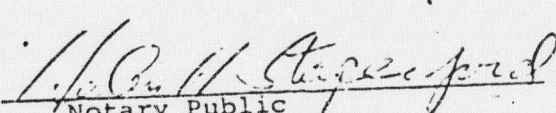
7. Deponent's firm does not have any interest materially adverse to the interest of any class of creditors or stockholders of any of the above-named debtors by reason of any other direct or indirect relationship to, connection with, or interest in any of the debtors or any underwriter described in paragraph 4 hereof or for any other reason.

8. Deponent's firm may have been, in the past, or may be in the future engaged in proceedings and actions or otherwise engaged in matters in which attorneys for creditors of the above-named debtors and other parties and interest have been or may be involved, but all of which are totally unrelated to these proceedings.

9. Deponent's firm will accept special retention by the Reorganization Trustee and agrees to be compensated for the reasonable value of its services to be rendered based upon an appropriate application of applications to the Court.


Robert W. Valimont

Subscribed and sworn to before
me this 6th day of Aug., 1975.


Notary Public

D. J. THOMPSON, JR., DOCKS COUNTY
MY COMMISSION EXPIRES FEB. 19, 1977
Member, Pennsylvania Association of Notaries

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN THE MATTER

OF

INVESTORS FUNDING CORPORATION OF NEW
YORK

I F C COLLATERAL CORPORATION
ALWICK REALTY CORP.

BALCO PROPERTIES CORPORATION

CH # 4 INCORPORATED

CH # 16 INCORPORATED

DENGRO REALTY CORP.

DODVI REALTY CORP.

8484 16TH STREET CORPORATION

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IFC SECURITIES CORPORATION

IFC SERRAMONTE ESTATES CORPORATION

INVESCO HOLDING CORPORATION

INVESCO MANHATTAN CORPORATION

9780 AIRPORT BOULEVARD CORPORATION

PARKEN REALTY CORP.

RETFORD REALTY CORP.

SKIPTON REALTY CORP.

300 EAST 95TH STREET CORPORATION

301 EAST 92ND STREET CORPORATION

320 WEST END AVENUE CORPORATION

3103 75TH AVENUE CORPORATION

2039 BROADWAY CORPORATION

2141 LEMOINE AVENUE CORPORATION

200 EAST 96TH STREET CORPORATION

VENTRY REALTY CORP.

: In Proceedings for
: the Reorganization
: of Corporations
: Under Chapter X of
: the Bankruptcy Act

: Nos. 74 B 1454,
: 1455 and
: 74 B 1511 -
: 74 B 1542
: inclusive

Debtors.

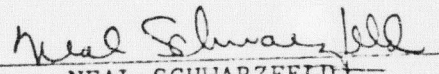
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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF NOTICE

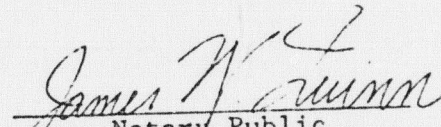
NEAL SCHWARZFELD, an attorney admitted to practice before this court, being duly sworn, deposes and says:

1. I am associated with the firm of Weil, Gotshal & Manges, attorneys for James Bloor, as Reorganization Trustee of the above-captioned debtors, the applicant herein.

2. In accordance with Rule 65(a) of the Federal Rules of Civil Procedure, on August 13, 1975 at approximately 9:45 A.M., I telephoned and spoke to Dennis G. Katz, Esq., the attorney for Jaytee-Pennel Co., and advised him of the instant application for an order to show cause and temporary restraining order.


NEAL SCHWARZFELD

Sworn to before me this
13th day of August, 1975.


Notary Public

JAMES W. QUINN
Notary Public, State of New York
No. 60-8470001
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter of

INVESTORS FUNDING CORPORATION OF
NEW YORK, IFC COLLATERAL CORPORATION;
et al.,

Debtors.

In proceedings for
the Reorganization of
Corporations under
Chapter X of the
Bankruptcy Act

Nos. 74 B 1454, 1455
and 74 B 1511-
74 B 1542
inclusive

DBB

-----X

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)

ss:

COUNTY OF ROCKLAND)

Emil Tauber hereby affirms that the following statements are
true:

I am a general partner of Jaytee-Pennndel Co., the owner of
the Pennledge Apartments. I make this affirmation in opposition
to the application of James Bloor, trustee, to restrain Jaytee-
Pennndel from continuing its action in the New York State Courts.
This affirmation, unlike Mr. Bloor's, is based on personal knowledge.

Although I'm sure Mr. Bloor has tried to be as accurate
as he can in describing the events of November 1974, I think his
lack of personal knowledge may have caused him to omit essential
facts. When we mailed the regular monthly payment to IFC in
November, we assumed that IFC was handling its business in the usual
way: we received no notice of a Reorganization proceeding; the
same employees with whom we have been dealing in the past were
still working at the same offices in the same positions. The
November mortgage payment bill did not indicate anything out of the

ordinary. As we had done in the past, we remitted the November payment to IFC with the expectation that IFC would adhere to its contractual obligation and make the November payment required by the first mortgagee.

A week after the payment was sent out, however, I learned that IFC was having severe financial difficulties and may be involved in bankruptcy proceedings. On or about November 11th we were informed by the first mortgagee that IFC had failed to make the November payment. That same day, we called Herbert G. Moore, vice-president of IFC, and demanded that the November payment be paid forthwith. He assured us that it had already gone out and would probably be received by the first mortgagee the next day.

On November 12, we were informed by the first mortgagee that the November payment still had not been received. In a telephone conversation with Mr. Moore, we were informed that there was an administrative error "in the comptroller's office"; however, he advised us that the check was on his desk and that it would be mailed forthwith. We relayed this information to the first mortgagee.

By the 15th, the alleged check still had not been received by the first mortgagee. Again, we were assured by IFC that the check went out. On November 18, (after all "grace periods" had expired) we spoke to Robert L. Germer, agent of the first mortgagee, who informed us that the November payment due on the first mortgagee still had not been received and further stated in unequivocal language that unless the sum of \$13,451.36 (the November payment + late charges) was delivered to him by the close of business that day, the first mortgagee would "call the mortgage", declare a default and accelerate the unpaid principal balance (in excess of \$1,000,000).

My attorney and I made numerous telephone calls to Mr. Moore to demand that IFC cable the money directly to the first mortgagee; we were told repeatedly that he was "in conference" and "was not taking calls." I even told his secretary that it was an "emergency", but he still wouldn't come to the phone. Having good reason to believe that the first mortgagee would accelerate its mortgage, I borrowed the necessary funds from my ^{other account} / in the late afternoon and had the money cabled directly to the first mortgagee that day.

I have no doubt that had I failed to take this action, a foreclosure proceeding would have been commenced against the Pennledge Apartments. The existing first mortgage is very advantageous to us (but disadvantageous to the first mortgagee): it bears an interest rate of only 6%, is self-liquidating, and is due in 1992. I have been in the real estate business for many years and understand that a first mortgagee who has such a disadvantageous mortgage would be prone to accelerate upon default - if not to foreclose, then to coerce the owner to give a more competitive return on the loan. If we resisted a foreclosure, we might have been faced with years of litigation accompanied by a lis pendens against the property. In sum, while the attorneys for the trustee characterize the trustee's actions as "an inadvertent failure to send the November payment", I am more prone to characterize it as a substantial breach of its contractual commitment which could have had disastrous results.

I was informed by the first mortgagee that future payments made by IFC or its trustee would not be accepted; in fact, neither IFC nor its Trustee has made the monthly payments required by the mortgage for 11 months. Jaytee-Pennadel has been dutiful in insuring

that there were no further defaults on the first mortgage during this period.

With regard to the obligations of Jaytee-Pennndel contained in the wrap-around mortgage, I have been ready, willing and able to make monthly payments to IFC, or its Trustee - and have tendered the same through my attorney. Prior to the institution of the State lawsuit, multiple demands were made upon the Trustee for adequate assurances of performance, as well as for an accounting of all escrow funds, neither of which has been provided.

The facts surrounding the instant motion should also be revealed. On July 7, 1975 a notice to take the deposition of the Trustee was duly served upon his attorney and called for an examination to be held on July 17, 1975. John Schwartz, Esq., one of Mr. Bloor's attorneys, requested an adjournment to August 4, 1975. which was confirmed by letter dated July 10, 1975. It was not until my attorney refused to consent to any additional adjournments that objection was raised to the scheduled deposition on the grounds that the State litigation was "not authorized under the applicable bankruptcy law". In other words, the real reason for Mr. Bloor's motion before this court is not so much that the reorganization proceedings will be embarrassed or interfered with (the only proper grounds for such a motion), but that Mr. Bloor might be embarrassed by the answers to specific questions under oath. This is made more evident by the fact that our first attempt at a State court action was on February 18, 1975, in which IFC rather than James Bloor was named as defendant. No action was

taken by Mr. Bloor for over two months after the commencement of the state action against him.

It is totally incredible that a Trustee appointed in New York should argue that he would be more prejudiced in a New York State court than he would be in a Pennsylvania State court. The Trustee has his office here and has engaged the services of an army of lawyers to provide him with adequate insight into the law of the State of New York. Discovery proceedings would have shown that the wrap-around mortgage was originated and executed in the State of New York, and that New York law governs its interpretation. In addition, the creditors of IFC do not need a foreclosure action in Pennsylvania to protect their interests, since Jaytee-Pennadel has made every reasonable attempt to assure them that net monthly payments will continue to be made if accepted.

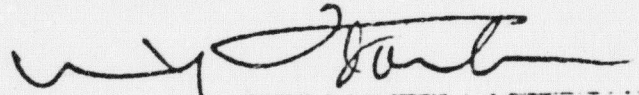
What we desire is a court declaration as to the respective rights and obligations of the parties under the wrap-around mortgage, among other things. Mr. Bloor's motion is based not so much on prejudice to the reorganization proceedings, but the prejudice which might result when the New York State court renders an adverse decision against IFC and him. I submit that fear of a remedy is not grounds for enjoining a state court action.

It would be manifestly unjust for Jaytee-Pennadel, a New York partnership, to be forced to litigate in an inconvenient forum (Pennsylvania), incur additional attorney's fees for out-of-state counsel, and suffer a lis pendens against its property because of circumstances created by the acts of IFC and its Trustee, which had ten months to bring a foreclosure action if he seriously believed

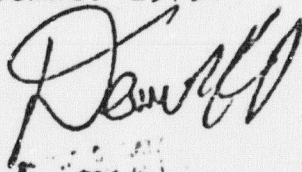
that the security of the mortgage was threatened.

I respectfully request that this court deny James Bloor the right to foreclose against our property in Pennsylvania. The same issues that would ultimately arise in the Pennsylvania courts could have already been resolved in the New York courts had the Trustee not procrastinated by obtaining an additional two weeks to answer and an additional month's adjournment of an examination before trial, not to mention the month already consumed by this litigation. The New York courts are at least just as capable of resolving this contractual dispute. While the Trustee has limitless funds with which to litigate smaller opponents to death, Jaytee-Pennel Co. would be severely prejudiced by any out-of-state proceedings. In view of certain admissions made in Mr. Bloor's affidavit of August 12, my attorney had advised me that he is fully prepared to submit a motion for summary judgment, on the papers, before a New York State Judge forthwith. Upon that representation, I think Mr. Bloor can be assured that he will have a much more speedy determination of this dispute if the New York State action proceeds, than he would if he commences a Pennsylvania action.

WHEREFORE the instant motion should be denied in all respects.


EMIL TAUBER

Duly affirmed this 11
day of September 1975.



1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 In the Matter :

5 of :

74 B 1454

6 INVESTORS FUNDING CORPORATION :

7 -----X

8 New York, N. Y.
9 October 20, 1975

10
11 B e f o r e:

12 HON. DUDLEY B. BONSAI,

13 District Judge

14
15 Appearances:

16 Attorneys for Trustee

17 Alan B. Miller, Esq.

18 Prudence Abram, Esq.

19 Neal Schwarzfeld, Esq.

20 Attorney for Securities and Exchange Commission

21 Don L. Horwitz, Esq.

22 Attorneys for Chase Manhattan Bank, N.A.

23 Milbank, Tweed, Hadley & McCloy

24 BY: Arthur Kirkland, Esq.

25 Attorney for Jay-Tee Pendel

Dennis Katz, Esq.

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THE COURT: Application of trustee to enjoin and stay commencement or continuation of any suits against trustee by Jay-Tee Pendel Company and for other relief.

MR. SCHWARZFELD: Your Honor, my name is Neal Schwarzfeld. This is an application by the trustee to stay an action pending against him in the New York Supreme Court in Rockland County and also for leave to retain special counsel to commence a foreclosure action in Bucks County, Pennsylvania. The entire dispute with Jay-Tee Pendel--

THE COURT: I had a little trouble understanding this. As I understand it, the trustee wants to foreclose in Pennsylvania where the property is located. Pendel wants to sue in Rockland County to get a declaratory judgment of some kind, and here we are sitting in New York with a Chapter X.

MR. SCHWARZFELD: That is right. Which is the reason for the application. The trustee is being forced to litigate the specific facts of the dispute.

THE COURT: I am not sure all this litigation is necessary, but I will hear you.

MR. SCHWARZFELD: Essentially what is involved --

THE COURT: It involves here who is going to pay this Buffalo Savings Bank.

MR. SCHWARZFELD: There is more to it than that.

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2 IFC Collateral holds a wraparound mortgage on the property.
3 Jay-Tee Pendel Company is the obligor in the first mortgage.
4 Back in November when the trustee was first appointed, and
5 in all the confusion surrounding that, the payment due from
6 IFC Collateral to the Buffalo Savings Bank was delayed
7 until November¹ 8. At the time it turned out that Jay-Tee
8 Pendel had paid it directly on or about the 15th of November.

9 THE COURT: They wanted to protect their position.

10 MR. SCHWARZFELD: That is right. The Buffalo Bank,
11 I believe, on the instruction of counsel for Jay-Tee Pendel,
12 or Jay-Tee Pendel itself, has now taken the position, and
13 has since November of last year, that it will not accept any
14 payments from IFC Collateral or from the trustee or from
15 anyone other than Jay-Tee Pendel itself.

16 THE COURT: This is the Buffalo Savings Bank.

17 MR. SCHWARZFELD: That is right.

18 THE COURT: Are they here?

19 MR. SCHWARZFELD: No, they are not. They are not
20 a party to any of the litigation between Jay-Tee Pendel and --

21 THE COURT: I can't see why they care who, as long
22 as they get their money.

23 MR. SCHWARZFELD: I don't understand it either.
24 Prior to the one inadvertent delay in November --

25 THE COURT: It was not inadvertent; it was just

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2 confused.

3 MR. SCHWARZFELD: Exactly, your Honor. In May of
4 this year Jay-Tee Pendel started its action up in Rockland
5 County. The action seeks, and I quote, "to reform and
6 recast the wraparound mortgage." Essentially what they want
7 to do, according to the complaint, is to change the wrap-
8 around mortgage into a second mortgage, subordinate to their
9 first mortgage to the Buffalo Bank.

10 THE COURT: What difference does all this make
11 other than who is going to pay the Buffalo Savings Bank?

12 MR. SCHWARZFELD: It makes a major difference in
13 the salability by IFC Collateral of this wraparound mortgage.
14 As a second mortgage, its value is considerably less.
15 Counsel for Jay-Tee Pendel argued in its brief that their
16 action up in Rockland County was nothing more than an action
17 for breach of contract. I think quite clearly it goes
18 considerably beyond that. If it were an action for breach
19 of contract, the only damages I could see that they would
20 claim would be the small late fee that Jay-Tee Pendel had
21 to pay in November, which was \$500 and change. Instead they
22 are seeking to totally change the form of this asset. Plus,
23 as we pointed out in our papers, if this action continues up
24 in Rockland County, the trustee will be forced to litigate
25 essentially the same issues in two separate places. They

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2 will have to litigate in Bucks County, Pennsylvania, in order
3 to foreclose on its wraparound mortgage. Since November,
4 Jay-Tee Pendel has not made any payments whatsoever on the
5 wraparound. Very similar issues would be litigated there
6 as would be litigated in Rockland County.

7 I don't think that the Rockland County action is
8 appropriately brought there under New York State law.

9 THE COURT: The property is located in Pennsylvania?

10 MR. SCHWARZFELD: That is right, but that is
11 another question of whether or not the New York State court
12 would dismiss the action on proper venue. I don't know.

13 THE COURT: I don't know.

14 MR. SCHWARZFELD: It would leave the same discovery
15 and there would be tremendous duplication, which is why,
16 even if Jay-Tee Pendel could maintain this action under
17 section 959, which is set forth in our brief, we don't
18 think --

19 THE COURT: I read that, yes, you dispute that.

20 MR. SCHWARZFELD: Yes, quite clearly, and I think
21 our brief makes our point very thoroughly there.

22 Secondly, even if they could bring that action,
23 again as we argue the point in our moving memorandum, this
24 Court has the discretion to stay that action, because of the
25 expense and inconvenience that would be caused to the

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2 trustee in litigating the same facts in two places.

3 THE COURT: How far is this property from Rockland
4 County?

5 MR. SCHWARZFELD: The property is in Bucks County,
6 Pennsylvania, which is, I would say, a hundred miles from
7 here or at least two hours from here by automobile, and I am
8 sure it is at least another hour from Rockland County.

9 THE COURT: I think I understand your point on
10 that.

11 What do you say to say, Mr. Katz? Why do you
12 want to litigate this matter in Rockland County?

13 MR. KATZ: We wish to litigate in Rockland County,
14 frankly, because it is the most convenient place.

15 THE COURT: Why is that?

16 MR. KATZ: My clients have an office in Rockland
17 County; I have an office in Rockland County.

18 THE COURT: Those are good reasons, but the
19 property is in Pennsylvania.

20 MR. KATZ: The property is in Pennsylvania, but
21 this lawsuit does not involve the title or any questions
22 concerning the line of the property.

23 THE COURT: I am not sure that it does not. Where
24 are these mortgages recorded?

25 MR. KATZ: They are recorded in Pennsylvania.

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2 They were executed in New York, and I believe New York law
3 controls. The mortgage is on Pennsylvania real estate, and
4 I don't think Pennsylvania law would control them.

5 MR. SCHWARZFELD: Again, your Honor, I won't dispute at
6 this point which law would apply.

7 THE COURT: What is your purpose in trying to re-
8 form the wraparound in Rockland County?

9 MR. KATZ: I don't think that was completely
10 brought in focus to your Honor. That is one ground which we
11 are seeking relief upon. There are about seven other grounds.
12 There is not only reformation that we are seeking; we want
13 a declaratory judgment as to who was at fault.

14 THE COURT: Who was at fault?

15 MR. KATZ: In not making the November payment.

16 THE COURT: What difference does it make?

17 MR. KATZ: It makes a difference, because of the
18 remedy that a court would fashion to rectify this situation.

19 THE COURT: What remedy do you have in mind?

20 MR. KATZ: Among other remedies, that we would pay
21 the first mortgagee as we have done for the last few months,
22 and then we would make a check out, as we were willing to do
23 and had tendered for the last ten months. This isn't a
24 case that we haven't paid anything. We offered to pay to
25 them what is due to them under the mortgage.

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2 THE COURT: What difference does all this make?
3 I am just wondering. If you send them a check for what they
4 are entitled to every month and the trustee pays the Buffalo
5 Bank and keeps the balance, I suppose that is what they
6 would do on the wraparound, what difference does all this
7 make?

8 MR. KATZ: Initially, your Honor, we don't want to
9 be in the position that we were in last November.

10 THE COURT: I don't think you ought to be, because
11 I am hopeful, and I think there is good reason to believe,
12 now that there is a trustee appointed, that these matters
13 are being handled properly, and I think that is quite unlikely
14 to happen again.

15 MR. KATZ: The problem is after the trustee,
16 whoever takes over this mortgage after the property is
17 eventually distributed or sold.

18 THE COURT: These fellows say you are asking the
19 trustee in effect to take a more unilateral position than he
20 has now.

21 MR. KATZ: He has the same junior position under
22 any theory. The only thing he does not have under my
23 theory is the control over the disbursement of funds.
24 Basically he has to take our word for it that we are paying
25 the first mortgage.

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THE COURT: He has a wraparound. I suppose he was committed to pay the Buffalo Bank by what you paid him.

MR. KATZ: That is correct, and he has defaulted.

THE COURT: I understand that, last November, but since that time this has been just sort of a sparring match.

MR. KATZ: Your Honor, it was not my intention to make it into a sparring match. The only thing we have going for us is the law, that's it. The law permits a suit in the state court for breaches of contract.

THE COURT: 659?

MR. KATZ: 959. I say that, and I am very convinced of it.

THE COURT: I am sure you are.

MR. KATZ: I haven't seen anything to unconvince me.

THE COURT: I am sure.

MR. KATZ: I don't see how the trustee can say he was not operating the property. This is clearly --

THE COURT: He was not operating the property; he was operating the wraparound mortgage.

MR. KATZ: The cases that we are cited by the trustee I don't think apply to reorganization. The one Second Circuit case, of course, deals with a straight bankruptcy. It has been discredited by the Supreme Court, in

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2 any event.

3 THE COURT: What bothers me a little about this
4 thing, Mr. Katz, is I would love to go into these questions
5 of the law in detail and come out with something, but offhand
6 what strikes me is why is it worthwhile? Really, the only
7 issue here at the moment is who is going to pay the first
8 mortgagee. What difference does it make?

9 MR. KATZ: It entirely makes a difference to the
10 trustee to the point that he would not allow us to continue
11 what we have been doing for the last ten months very
12 diligently.

13 THE COURT: You say that when the Chapter X started
14 there was less confusion, I am aware of that, and you say
15 that by filing the Chapter X it changes the thing so that
16 instead of your paying the money over to the trustee and
17 having the trustee pay the Buffalo Savings Bank, you want to
18 pay the Buffalo Savings Bank. I can't see the difference.

19 MR. KATZ: We want to make sure that there is
20 going to be no default on the first mortgage.

21 THE COURT: I think you are entitled to that
22 protection. What are the dates of payment?

23 MR. KATZ: We have to pay Buffalo on the 1st. They
24 customarily give us a few days, a five days' grace period, I
25 believe.

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2 THE COURT: The Buffalo Bank?

3 MR. KATZ: Yes. Contrary to what was said, your
4 Honor, I have no control over the Buffalo Savings Bank, I
5 really don't, and I have not used any influence to cause them
6 to reject their payments.

7 THE COURT: Buffalo Savings Bank I guess this
8 Court will have some control over; it is a New York bank.

9 MR. KATZ: I assure this Court that I have no
10 control over their actions. I think there has also been a
11 confusion as to the trustee's objection to the remedy we are
12 seeking or at least one of the remedies we are seeking, and
13 then he is saying therefore we should not have an injunction.
14 I think an injunction is a very drastic remedy. I think a
15 Court should take all presumptions against an injunction, and
16 I don't think that because he does not like the remedy that
17 therefore an injunction should issue.

18 THE COURT: Right. What about this suit in
19 Pennsylvania, this foreclosure suit?

20 MR. KATZ: Totally unnecessary, your Honor.

21 THE COURT: What is your purpose of the foreclosure
22 suit which the trustee wants, counsel?

23 MR. SCHWARZFELD: Your Honor, the purpose of the
24 trustee's prospective foreclosure suit is very simple. The
25 trustee has not been paid since November.

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2 THE COURT: You are satisfied that the first
3 mortgagee has been paid and that the trustee has gotten
4 what was left over? Are you satisfied with that?

5 MR. SCHWARZFELD: Your Honor, we, in connection
6 with an attempt to settle this case prior to today, offered
7 on behalf of the trustee --

8 MR. KATZ: I am sorry for interjecting, but I think
9 that is irrelevant. I think offers and talks of settlement
10 are irrelevant.

11 THE COURT: Nothing is irrelevant in this court on
12 that. We have got distinguished gentlemen from the banks and
13 the SEC, and I want them to know everything that I know.
14 But anyway the point I am making is that isn't that really
15 the only issue here, to see that the first mortgagee gets
16 paid, No. 1, and No. 2, to see that the trustee gets what
17 he is entitled to, and No. 3, to see that the thing stays
18 afloat so that your client is not put in a position where
19 somebody is going to move him out?

20 MR. SCHWARZFELD: Another consideration, of course,
21 is the protection that the trustee needs in knowing that
22 in the future the first mortgagee will be paid, which is why--

23 THE COURT: The trustee says that the first
24 mortgagee did not get paid last November, and that is true.
25 He wants to prevent a repetition of that.

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2 MR. SCHWARZFELD: He did not get paid until
3 November 18. It is not a question that no payment was sent.
4 Payment was sent on or about November 18. Again, your
5 Honor --

6 THE COURT: Why does the trustee want to bring a
7 suit in Pennsylvania when they come all the way from
8 Rockland County to Pennsylvania?

9 MR. SCHWARZFELD: Because we have not been paid,
10 your Honor, very simply.

11 THE COURT: You have been paid. The gentleman
12 paid --

13 MR. SCHWARZFELD: No, we have not been paid any-
14 thing, your Honor, since November.

15 MR. MILLER: Not one dime.

16 MR. SCHWARZFELD: Not a penny.

17 MR. KATZ: We have offered to pay them, but they
18 have not accepted payment because they wanted the full
19 payment. We only wanted to give them the difference, in
20 other words, what they would net, so we have offered them and
21 we are willing to pay them at any time if we could arrange
22 an agreement so this foreclosure action would not have to
23 take place.

24 MR. SCHWARZFELD: Your Honor, I did --

25 THE COURT: Why didn't you pay them?

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2 MR. KATZ: Because we did not want to pay them
3 and still be faced with a foreclosure. It is a matter of
4 just common sense, from our point of view. We are willing
5 to pay them, but we are not willing to pay them and go into
6 a foreclosure.

7 MR. SCHWARZFELD: In an attempt to resolve this,
8 I did offer to Mr. Katz over the telephone that, starting
9 with next month, the trustee would accept two checks -- one,
10 a certified check payable to the bank, which we would then
11 forward to the bank, and two, a check to IFC Collateral for
12 the difference.

13 THE COURT: Right.

14 MR. SCHWARZFELD: Mr. Katz rejected this offer.

15 THE COURT: What is the matter?

16 MR. KATZ: I rejected the concept of a certified
17 check. That is my only objection. Otherwise, if I could
18 just give a check made payable to Buffalo Savings to the
19 trustee's attorneys, I would have no objection. But as a
20 practical matter, your Honor, the rent comes in --

21 THE COURT: What is the trouble with a certified
22 check?

23 MR. KATZ: The rent checks come into New York.
24 They start on the 1st and the collections are not sufficient
25 by the 5th or even the 8th --

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THE COURT: What is the distinction between the Buffalo Bank and IFC Collateral? What is the monthly figure? How much does the Buffalo Bank get and how much does the IFC get?

MR. KATZ: We have to pay Buffalo almost \$13,000 on the first mortgage. On the second mortgage we are obligated by 2500 or 2700 to IFC, so there would be no problem making the payments, but we could not certify a check in the amount of \$13,000 by the 5th of the month.

MR. MILLER: Your Honor, the idea of the certified check was so that they could make their check payable directly to Buffalo and have the assurance we would not spend their check to Buffalo, and give us the assurance that their check would clear.

THE COURT: If the check is made out to Buffalo and sent by him to you, you can't spend the money whether it is certified or not certified.

MR. MILLER: Then I know the check is good, Judge, and then I don't have to rely on whether Buffalo will notify me or notify him. I know that we have sent the funds on to Buffalo.

THE COURT: We have been talking about reforming these instruments, and I ask again, is there any condition in the wraparound that you would receive a certified check?

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MR. SCHWARZFELD: Not to my knowledge, your Honor.

MR. KATZ: There is none.

THE COURT: I think the less reforming we do, the better. I don't know why that arrangement by which these checks -- if the check bounces, I would think if the check for the savings bank bounces, that could happen now. There is no change in that.

MR. SCHWARZFELD: Your Honor, one key difference is that if there is a noncertified check payable to IFC Collateral and it bounces, IFC Collateral knows about it.

THE COURT: But the check is going to be payable to Buffalo Savings Bank.

MR. SCHWARZFELD: The problem is one of notice. The Buffalo Bank has, I am told by Mr. Katz, refused to agree to provide notice to IFC Collateral or to the trustee in the event of a bounced check.

THE COURT: I have jurisdiction over the Buffalo Bank; that doesn't bother me at all. They do anything like that and you bring them right in here.

MR. SCHWARZFELD: We wouldn't know until too late.

THE COURT: I would think that if you sent on the check and you could get out a little form letter here, "Your monthly check in such-and-such an amount which we have received from Jay-Tee Pendel Company to cover the" -- whatever

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2 the service is for the month of so-and-so, and if you want
3 to add that: "If anything happens to this check, please
4 notify us immediately."

5 MR. SCHWARZFELD: The problem is, the bank has not
6 agreed to notify us.

7 THE COURT: The bank has got its money in. Why
8 should they have any objection to that?

9 MR. SCHWARZFELD: I don't understand why they
10 object to it.

11 THE COURT: I don't think they would. If they do,
12 I would want them to appear in court here and tell me why.
13 I don't know that it isn't a perfectly sensible thing. I
14 don't know why you have all these lawsuits in Rockland
15 County, in Pennsylvania, and coming here to the Southern
16 District of New York. It seems to me that it is costing
17 everybody more money. Why can't you work something out like
18 that?

19 MR. SCHWARZFELD: Your Honor, in my discussions with
20 Mr. Katz we had a further problem in terms of working out
21 this dispute along the lines that you have now suggested.
22 Mr. Katz informs me that his clients insist on being compen-
23 sated for their attorneys' fees.

24 THE COURT: If you want to make an application
25 for attorneys' fees because of what you have been up against,

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2 you can make the application and I will consider it. I am
3 not sure I will give it to you, but I will consider it. I
4 think you ought to do it.

5 I have got a job, and I will try to carry on and
6 do what I think is fair. Any applications for attorneys'
7 fees I want pretty well documented if you can make it, the
8 whys and wherefores, time spent, that kind of thing, pretty
9 detailed, but that will be something else that I don't need
10 to decide right now.

11 Do you think you could work that out? Do you
12 think you could settle an order on this? I take it if that
13 is done, then the trustee doesn't need a lawyer to bring the
14 foreclosure in Pennsylvania, does it?

15 MR. SCHWARZFELD: That is correct, your Honor.

16 THE COURT: I think that makes sense, and I don't see
17 any problem in the two checks, if that is going to make you
18 a little happier. I don't see that that makes any problem.
19 If that Buffalo bank kicks up its heels, I would like to know
20 it right away. I don't see that they have any basis for it.

21 MR. SCHWARZFELD: Your Honor, may I just make one
22 further request. Since the settlement your Honor has just
23 suggested does affect a reform of the various instruments,
24 I would --

25 THE COURT: What reform is it? Do you mean the

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two checks?

MR. SCHWARZFELD: Yes, your Honor. And if either party to this agreement that we are going to try and reach should dispose of the property, I would suggest that we have a self-limiting change, if you will, so that if either party disposes of their interest, the agreement would no longer be in any force and effect.

THE COURT: In other words, it would not be binding on the successors and assigns. That is your point.

MR. KATZ: To tell you the truth, your Honor, I would not care about that. I don't see why it would be binding on successors and assigns. I don't see why we have to be burdened with selling a piece of property to inform a prospective purchaser.

THE COURT: Your point is if they sell the wraparound mortgage, somebody else, you would like this arrangement to apply.

MR. KATZ: That is right. And if we sold the property we would like to inform the prospective purchaser that they are not going to have to worry about bankruptcy courts, reorganizations.

THE COURT: You have the property, is that right?

MR. KATZ: That is correct. I don't see any reason to limit this settlement.

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2 THE COURT: I think we can put in a -- how long
3 does this mortgage at the Buffalo bank continue?

4 MR. KATZ: 1992.

5 THE COURT: Why don't we do this, gentlemen: Why
6 don't you enter into this arrangement; have it running for,
7 say, two years, and have it binding on each party, and then
8 during that two years let us see what happens. If there is
9 any reason why anybody is unhappy about it, we can discuss
10 it later.

11 MR. KATZ: Again, we require a prospective
12 purchaser to come back and make an application. These are
13 very expensive applications to make.

14 MR. SCHWARZFELD: I should point out that when Mr.
15 Katz's client purchased this property it was already subject
16 to the wraparound mortgage. They knew that --

17 MR. MILLER: Excuse me, Mr. Schwarzfeld. Your
18 Honor, I think that Mr. Katz said before that the trouble
19 they have with one check to the wraparound mortgagee is the
20 fact that the wraparound mortgagee is in these proceedings
21 and is therefore subject to the jurisdiction of this court.
22 He has a lot of other problems and a lot of other difficulties.
23 If the trustee succeeds in selling the wraparound mortgage
24 to somebody else, all of those problems disappear, and then
25 if he wants to sue somebody, he is not faced with a stay --

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2 THE COURT: I think undoubtedly that is quite true.

3 I see no harm in providing a time on
4 this thing if it is going to make everybody happier, and
5 then if you sell the wraparound mortgage, I am sure there
6 won't be any problem. My hunch will be that Mr. Katz will
7 be delighted.

8 MR. KATZ: Not entirely, your Honor.

9 THE COURT: Not entirely?

10 MR. KATZ: At least I know who I am dealing with
11 now. I don't know who might pick up this note.

12 THE COURT: You have been awfully worried about
13 who you have been dealing with the last few months.

14 MR. MILLER: Perhaps I can make this suggestion,
15 then, rather than trying to fix the specific time, your
16 Honor, that would accommodate the suggestion your Honor made
17 as well as Mr. Katz. If this trustee is to sell the wrap-
18 around mortgage, which is the only asset involved, he must
19 do so by applying to this Court on notice to all interested
20 parties, and I would therefore suggest that the appropriate
21 time to terminate the arrangements would be either at the time
22 an application is made by the trustee for sale or at the time
23 when Mr. Katz's client sells the property subject to the
24 mortgage, because at either of those times a new party is
25 entering the picture.

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2 THE COURT: I think that makes sense.

3 MR. KATZ: If I could just take the first part of
4 the suggestion, I would go along with that. If when the
5 trustee sells it the trustee would make an application, that
6 would be fine.

7 THE COURT: He would have to anyway. The trustee
8 would have to make an application. I think that would work
9 out, and all he is asking is if you sell the property it
10 would also be a chance for the application to the Court
11 perhaps to go back to the original lien.

12 MR. KATZ: That I can't agree with, your Honor. I
13 am afraid I can't agree with that second part.

14 THE COURT: What is the difference?

15 MR. KATZ: Again, any contract that would have to
16 be negotiated with a subsequent purchaser would have to
17 take into account the bankruptcy court and an application,
18 and it would just be very complicated.

19 THE COURT: My hunch is the fellow who bought the
20 property would much rather not. You are doing this just
21 because you are suspicious, because of what happened to you
22 last November.

23 MR. KATZ: I think most people would shy away from
24 a wraparound mortgage for the same problem, because when you
25 send down a check, you don't know what is going to happen to

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2 it. You hope that it would be applied properly. It won't
3 always be guaranteed. In this particular case the Buffalo
4 Savings Bank was very threatening when they did not receive
5 their payment on time and they talked about foreclosure
6 also.

7 THE COURT: I am sure they did. I don't think
8 really -- yes, that that is a very important point, but I
9 will be perfectly willing to have your point and, if you
10 want to be protected, to have the arrangement continue for
11 a period of time. You don't have the idea of selling this
12 property at the present time.

13 MR. KATZ: I can't say. It is not up for sale
14 right now.

15 THE COURT: I don't see why that can't be worked
16 out. I think the trustee is quite right in that, because
17 then the application that they have would have to come before
18 the Court.

19 MR. MILLER: Absolutely, your Honor.

20 MR. KATZ: I have no objection to that aspect.
21 I don't want to tie my client down to making an application
22 when he sells to continue this arrangement, and I don't
23 see why the trustees should object.

24 MR. MILLER: I don't see why the property cannot be
25 sold under the original terms of the wraparound mortgage.

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2 Your Honor is well aware of the fact that since November
3 1974 many parties have made many payments to the trustee in
4 escrow, in trust, and under temporary arrangements, and
5 there has not been a single application to this Court or
6 statement by anyone involved in these proceedings that moneys
7 have been dealt with improperly, that the trustee has
8 accepted funds on the one hand and not paid them out as he
9 is committed to do so on the other. I think the trustee has
10 shown the fact that he is a careful and responsible
11 individual.

12 In that regard, your Honor, I think that the
13 pragmatic resolution of this is that as long as the present
14 owner owns the property and wants the benefit of this
15 arrangement, that is fine, and as long as the trustee owns
16 the mortgage it should be all right, but once we introduce
17 new parties into the picture it would seem to me that at
18 that time it is appropriate for the interim arrangement to
19 terminate and the original contemplated mortgage instrument
20 to take effect.

21 ^{KATZ}
MR. MILLER:— As a practical matter, your HOnor, if
22 they get two checks as we have contemplated, they are in no
23 worse position than if they get one check and then have to
24 divide it up. They have just as much assurance that two
25 checks would be good as one check.

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25

1 THE COURT: You know, Mr. Katz, if you sell this
2 property to somebody else, and did not have your unfortunate
3 experience last November, in just a general businessman's deal,
4 it would not seem as important to you. The property
5 carries itself pretty well, and there is enough money to
6 pay the service on the first mortgage. I don't think this
7 question actually arises. I think that is sensible. I
8 would like to make it just as easy for you as possible. I
9 would think anybody who was going to buy the property from
10 Jay-Tee Pendel Company would not give a hoot about any of
11 this. I really don't think so.

12 MR. KATZ: I can only really go by what my client
13 tells me. He feels it would be a substantial detriment in
14 selling the property. Any time you have a wraparound
15 mortgage it is a detriment to sell the property.

16 THE COURT: What I would like to do is this, maybe.
17 If he has not got any buyers at the present time and if he
18 sells it, it is going to take a period of negotiation, and
19 I would like to make this arrangement without prejudice, so
20 that if there is a prospective purchaser that your client
21 thinks is serious and he is worried about this point, he can
22 bring it up, and I don't know that that necessarily means
23 that he is going to come from Spring Valley either. Perhaps
24 you can write to the trustee, and if you all agree -- or if
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2 it wasn't agreed, you can write me a letter and we can see
3 if we can resolve it. I think that is the best way. We are
4 talking about assumptions now.

5 All right, gentlemen, why don't we do that and
6 settle an order on it. I hope you can agree on it. If that
7 is done, that makes it unnecessary for me to consider a stay
8 on an injunction or something like that, and I hope it will
9 terminate both the lawsuits in Rockland County and in
10 Pennsylvania. That would be a good idea.

11 MR. KATZ: I will be happy to try to work it out
12 with the trustee's attorneys.

13 THE COURT: Thank you, Mr. Katz. Thank you very
14 much, gentlemen.

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In the Matter of :

6 INVESTORS FUNDING CORP., :

74 B. 1454

7 Debtor :

8 -----X

9
10 B e f o r e :

11 HON. DUDLEY B. BONSAI,

District Judge

12
13 New York, New York

14 January 19, 1976--2:30 p.m.

15 A P P E A R A N C E S :

16 ALAN B. MILLER, ESQ.,
Attorney for Trustee

17 WEIL, GOTSCHAL, & MANGES, ESQS.,
18 Attorneys for Trustee

19 BY: NEIL SCHWARZFELD, ESQ.,

20 ROBERT HAFT, ESQ.,
Attorney for Debentureholders

21 ARTHUR KIRKLAND, ESQ.,
Attorney for Chase Manhattan Bank

22 DON HORWITZ, ESQ.,
23 Attorney for the SEC

24 WILL B. SANDLER, ESQ.,
Attorney for Institutional Investors Trust

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2 DENNIS KATZ, ESQ.,
Attorney for Jaytee Pendell Company

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THE CLERK: In the matter of Investors Funding

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Corporation.

7

THE COURT: Good afternoon, gentlemen.

8

All right, what is the first matter we have on?

9

Is Hampshire Towers Associates on, or is that to be adjourned?

10

MR. MILLER: Yes, your Honor, it will be adjourned

11

for approximately three weeks.

12

If your Honor will enter the order I am about

13

to hand up, based on a stipulation, this is a matter where

14

we paid use and occupancy from month-to-month in order to

15

retain our interest or whatever our right, title and interest

16

is in the property.

17

THE COURT: Right.

18

MR. MILLER: And then adjourned approximately

19

for three weeks so that the next month's stipulation may

20

be prepared and signed (handing it to Court).

21

THE COURT: Gentlemen, have you seen this order?

22

Does anybody have any objection?

23

MR. MILLER: It is in the same form, your Honor.

24

MR. HAFT: Yes, your Honor, it is the same

25

standard form.

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2 offer because of the guarantee of Mr. Shapiro, and potential
3 problems in working out the guarantee, or the assignment
4 back to us of the guarantee -- and we recognized some of
5 the problems that might arise in a foreclosure proceeding
6 if the guarantor were named.

7 At that time the Trustee indicated its willing-
8 ness to accept the offer, subject to the consent of Chase,
9 which I have indicated to you was not forthcoming, and since
10 then I think the Trustee has had a change of heart, and I
11 have advised counsel for the various trusts, and I simply
12 wanted the record in this court to reflect that small change --
13 and I consider it a small change -- in the Trustee's position.
14 He was unwilling and is unwilling to accept that offer, and
15 we would rather take our chances in the foreclosure proceed-
16 ing.

17 THE COURT: All right. The next thing I have
18 here is the application of the Trustee to enjoin and stay
19 commencement or continuation of any suits against the Trustee
20 by Jaytee Pendell Company and for other relief.

21 Incidentally, gentlemen, I would like to say,
22 before you argue this matter, that I think the question of
23 ad hominem -- after all, I think the lawyers who practice
24 in this court are opposites of the Court, and I am not too
25 patient with these ad hominem complaints. I want to mention

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2 that to Mr. Katz. I would rather hear this not on the
3 complaints but hear it on the merits. I just mention that.

4 All right.

5 MR. MILLER: Your Honor may recall that when
6 the matter was on the last time, the principal argument
7 was made on behalf of the Trustee by my associate,
8 Mr. Schwarzfeld, and I would like to introduce him to your
9 Honor again and ask that your Honor grant permission for
10 Mr. Schwarzfeld to argue on behalf of the Trustee.

11 THE COURT: Yes.

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12 MR. SCHWARZFELD: Thank you, your Honor.

13 The application by the Trustee, your Honor, is
14 an application to stay an action brought by Jaytee Pendell
15 Company in the Supreme Court, Rockland County, against the
16 Trustee. That action, your Honor, seeks to, and I quote:
17 "reform and recast a wraparound mortgage held by IFC Collateral"

18 The mortgage pertains to some property located
19 in the State of Pennsylvania -- Bucks County specifically.

20 Jaytee Pendell Company is the owner of the
21 property, subject to a first mortgage payable to the Buffalo
22 Savings Bank, and also subject to a wraparound mortgage pay-
23 able to IFC Collateral. That wraparound mortgage was in
24 existence at the time that Jaytee Pendell acquired its
25 interest in the property.

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8

2 Your Honor, in November of 1974, when the Trustee
3 was first appointed, and in all the confusion attendant
4 upon that appointment, the payment on the first mortgage
5 that IFC Collateral forwarded to Buffalo under the terms of
6 the arrangement it had received payments on the wraparound
7 from Jaytee Pendell --

8 THE COURT: The Trustee was delayed in making
9 the payments over.

10 MR. SCHWARZFELD: That is right. The payment
11 was due on the First, with a 10-day grace period -- I be-
12 lieve it was on the 18th that the payment was sent.

13 Well, the Trustee was advised by the Buffalo
14 Bank that Jaytee Pendell had already made that payment
15 directly.

16 Subsequent to that the Trustee has been attempt-
17 ing to make the payments but the Buffalo Bank has advised
18 the Trustee that it will not accept any further payments from
19 the Trustee.

20 THE COURT: Why is that? Is there a reason for
21 that?

22 MR. SCHWARZFELD: I don't know. They did not
23 give a reason, your Honor. It is my understanding from
24 reading the correspondence from the bank to the Trustee that
25 it was at the request of counsel for Jaytee Pendell, but I

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2 do not know this personally for a fact.

3 Well, with this background, let me say, as your
4 Honor recalls, we were before you on this on October 20th
5 of last year, at which time you suggested, why don't we just
6 work this out? Indeed, your Honor suggested the mechanism
7 for it.

8 THE COURT: I thought it could be worked out.

9 MR. SCHWARZFELD: Your Honor, Mr. Katz and I
10 spent a great deal of time on the telephone discussing this,
11 and adopting your Honor's suggestion we worked out a system
12 whereby Jaytee Pendell will send to the Trustee two checks --
13 one payable directly to Buffalo, which the Trustee will for-
14 ward, and one payable to IFC Collateral. And we worked out
15 various notice requirements and things which had been
16 problems, and a termination date for this agreement.

17 Well, everything was set except for a problem:
18 Counsel for Jaytee Pendell insisted that we agree that
19 he and his client be awarded their counsel fees incurred in
20 connection with this dispute.

21 This matter had come up before your Honor on
22 October 20th, and you said at pages 17 and 18 of the tran-
23 script of that day that Mr. Katz is free to make an applica-
24 tion and you will consider it at that time, but to work
25 out the other details.

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2 Mr. Katz felt, for whatever reasons, that this
3 was unacceptable, and he insisted that we agree to those
4 counsel feels.

5 This the Trustee feels is entirely inappropriate,
6 your Honor.

7 Unfortunately, this leaves us in a position where
8 we have to get back to the merits of this application.

9 The Rockland County lawsuit, your Honor, seeks,
10 and I quote again, "to reform and recast the wraparound
11 mortgage."

12 Essentially what that --

13 THE COURT: Is that stayed by an order?

14 MR. MILLER: No, it is not. It is an action
15 presumably brought by Jaytee Pendell against the Trustee
16 individually, not as against the debtor corporation, and
17 under Section 959 of the United States Code --

18 THE COURT: I just wanted to get that clear.

19 Okay.

20 MR. SCHWARZFELD: In fact, your Honor, what the
21 point of the Rockland County lawsuit is is quite clear --
22 it was an attempt to unwrap the wraparound mortgage and make
23 it into a second mortgage. Indeed, Mr. Katz' comments to
24 the Court on October 20th -- and this is at page 25 of the
25 transcript -- make it quite clear that he feels that any

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2 wraparound mortgage would be a substantial detriment to
3 the property and should be stricken.

4 Your Honor, Mr. Katz has stated that he relies
5 on Section 959 as his authority for bringing this action
6 and for being permitted to bring this action.

7 As discussed at length in the two memoranda sub-
8 mitted by the Trustee, your Honor, Section 959 does not
9 apply to an action such as this, which seeks to affect the
10 Trustee's title to the property. Section 959 is aimed at
11 things like a tort committed by the Trustee's agents in the
12 course of conducting the business of the bankrupt.

13 This, your Honor, is very, very different. Again,
14 Mr. Katz is trying to change the nature of the instrument
15 held by the Trustee and by IFC Collateral -- a change, your
16 Honor, that will make that asset considerably less valuable
17 as an asset of the debtor.

18 That this action is not an action for breach
19 of contract I think is made clear by two points: First,
20 your Honor, Mr. Katz has set forth in his brief that he intends
21 sometime in the future to seek money damages for breach of
22 contract -- in fact he does it now.

23 In any event, if this was an action for breach
24 of contract, the only remedy would be for the late payment,
25 \$500, that Mr. Katz' client had to pay for the one month,

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2 back in November, when the Trustee's payment to the Buffalo
3 Savings Bank was late.

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4 Finally, your Honor, even if this action could be
5 brought under Section 959, of course this Court has juris-
6 diction not to allow it to go forward in order to avoid
7 embarrassment to the estate -- and by "embarrassment" I mean
8 the fact of additional litigation costs.

9 In the Trustee's application we seek leave to
10 commence a foreclosure action on the wraparound mortgage in
11 Bucks County.

12 THE COURT: Why is that? What is the basis for
13 your action?

14 MR. SCHWARZFELD: Very simply, that the Trustee
15 has not been paid on the wraparound mortgage since November.
16 An action must be brought --

17 THE COURT: Are you telling me that you are
18 getting two checks?

19 MR. SCHWARZFELD: This was the agreement we had
20 worked out, your Honor.

21 THE COURT: But it was never carried out.

22 MR. SCHWARZFELD: That is right, because of
23 Mr. Katz' insistence on our agreement for attorney fees --
24 we would have to bring our action in Bucks County, because
25 that is where the property is. You cannot sue in New York

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2 on a mortgage in Pennsylvania -- at least that is my under-
3 standing under both New York and Pennsylvania law, and the
4 fact that the Trustee would be forced to litigate essentially
5 the same facts in two places is sufficient embarrassment to
6 the the estate of the bankrupt to warrant that the Rockland
7 County action be stayed, and that, as requested in the
8 application, the Trustee be authorized to commence an action
9 in Bucks County.

10 THE COURT: Do I understand, Mr. Schwarzfeld,
11 that this arrangement that you thought was worked out by
12 Pendell by giving two checks -- one for the Buffalo Bank
13 and the other for IFC -- was never carried out at all, there
14 was never a time when it was carried out.

15 MR. SCHWARZFELD: That is correct, your Honor.

16 THE COURT: All right.

17 MR. KATZ: May it please the Court, first I want
18 to clarify a few misconceptions before I go into the sub-
19 stance of my argument.

20 First of all, I never made a suggestion to the
21 first mortgagee that they refuse payment from IFC, and I
22 am sure there is nothing that Mr. Schwarzfeld has that shows
23 to the contrary -- he mentioned it is only his belief.

24 Second of all, my client has tendered payment
25 to IFC on all principal and interest payments due to IFC

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2 pursuant to the wraparound mortgage.

3 THE COURT: And how did you do that?

4 MR. KATZ: I mentioned to him that my client was
5 ready, willing and able to deliver checks to them, and he
6 still is ready, willing and able to deliver checks.

7 THE COURT: Did you say you would deliver checks
8 only if you got attorney's fees?

9 MR. KATZ: No, that is not correct, your Honor.
10 I told him they would deliver if they agreed not to commence
11 a foreclosure action. That is the only condition, but they
12 did not want to accept it because they felt they were
13 entitled to escrow payments in addition to the principal
14 and interest, and they were entitled to the essential pay-
15 ments for the water and sewer bills, and that we were not
16 ready to give to them, nor were we willing to give the check
17 due the first mortgage because we wanted to make sure that
18 the first mortgage was being satisfied, which it has been
19 for 15 months. Anytime they want to have a check for
20 principal and interest they only have to inform me in writ-
21 ing.

22 THE COURT: Let me ask, Mr. Schwarzfeld -- excuse
23 me one second.

24 MR. KATZ: Yes.

25 THE COURT: He says he is ready to make these

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2 payments but under some condition about the water and sewer
3 bills.

4 MR. SCHWARZFELD: Your Honor, it is my under-
5 standing of the instruments involved that the payment that
6 Mr. Katz refers to are not those set forth in the wraparound
7 mortgage.

8 Secondly, and perhaps more importantly --

9 THE COURT: I think he is talking about payment
10 of principal and interest on the first mortgage and the
11 wraparound, isn't that so?

12 MR. KATZ: No, no, your Honor. What they do
13 is they take our big check and give it to the first mortgage,
14 and they retain it for themselves. I am offering to give
15 them what they would have retained for themselves, pending
16 the outcome of our New York State litigation.

17 THE COURT: Well, I am puzzled about what the
18 whole problem is.

19 As I understand it, Mr. Katz, you say they will
20 not pay -- that you would be willing to pay IFC what they
21 are entitled to under the wraparound mortgage --

22 MR. KATZ: What their equity is entitled to.

23 THE COURT: What their equity is entitled to.

24 MR. KATZ: In other words, given their equity
25 position in dollars --

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2 THE COURT: What is that?

3 MR. KATZ: I think about \$35,000.

4 THE COURT: I do not know what the mortgagee's
5 equity is.

6 MR. KATZ: Well, the wraparound mortgage is
7 of a large amount, but it includes within it the amount of
8 the first mortgage, so the difference between it and the
9 first mortgage --

10 THE COURT: Right, and they say it would be
11 perfectly all right so far as the first mortgage is concerned,
12 the Buffalo Savings Bank, has got to be paid on its first
13 mortgage -- there isn't any question about that.

14 MR. KATZ: That is correct. We would like to
15 pay them ourselves.

16 THE COURT: Everybody is agreed on that, I take
17 it.

18 MR. KATZ: Yes, we would like to pay them our-
19 selves.

20 THE COURT: Why? What difference does it make?

21 MR. KATZ: The difference is that we would be
22 able to ensure ourselves that they will get paid. The last
23 time we went through this --

24 THE COURT: No, no, wait a minute. As I under-
25 stand it, there is some arrangement by which you send IFC

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2 two checks -- one payable to Buffalo and one payable to --

B4 3 MR. KATZ: That is a third misconception I would
4 like to clear up.

5 THE COURT: You say you never agreed to that?

6 MR. KATZ: No, your Honor. We made an agreement --

7 THE COURT: Then let me ask you this, as I
8 understand it, under the terms of the wraparound mortgage
9 which Pendell signed, the payments are to be made to the
10 wraparound mortgage and the provisions are that the wraparound
11 mortgage would pay the first mortgagee.

12 MR. KATZ: That is correct. They breached their
13 contractual obligation to do so, and that is the basis for
14 our state court action. It is a suit on a bilateral contract
15 which they have breached. We are seeking -- in any event,
16 that is the third misconception.

17 THE COURT: What is the breach that you claim?
18 What happened last October when they did not pay it?

19 MR. KATZ: That is one aspect of the breach.

20 THE COURT: What is the other aspect?

21 MR. KATZ: The other aspect is that they misled
22 us by telling my client multiple times that the payment had
23 been made. My client relied on this representation, which
24 was false.

25 THE COURT: And how is your client hurt?

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2 MR. KATZ: My client was hurt because the first
3 mortgage gave him the ultimatum: Either that he get the
4 money in in two or three hours or there would be an accelera-
5 tion of the deed, and a foreclosure.

6 THE COURT: And he did get it in.

7 MR. KATZ: And he did get it in.

8 THE COURT: So the prejudice would be the question
9 of interest that he would have to pay.

10 MR. KATZ: There was a question of interest, and
11 there was a question of credit standing with regard to the
12 first mortgage.

13 THE COURT: I do not think you should be worried
14 about credit standing, but what about the interest -- what
15 did it amount to?

16 MR. KATZ: Five hundred and some dollars, plus
17 out-of-pocket counsel fees.

18 THE COURT: Well, I think --

19 MR. KATZ: The problem is, your Honor, that the
20 Trustee tends to characterize this as just a nuisance to
21 him that he has to litigate a contractual action in the
22 state court.

23 The fact of the matter is --

24 THE COURT: Well, Mr. Katz, I understand that.
25 I can understand the Trustee, and you must understand that,

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2 too, that the Trustee has problems. He is not in Rockland
3 County.

4 MR. KATZ: Well, I am not in New York County.

5 THE COURT: Where are you?

6 MR. KATZ: Rockland County.

7 THE COURT: Oh, you are in Rockland County; I see.

8 MR. KATZ: Nor am I in Bucks County.

9 THE COURT: Nor are you in Bucks County.

10 MR. MILLER: Your Honor, may I be permitted to
11 address you?

12 THE COURT: Well, I am really trying to resolve
13 this thing -- I want to hear from all of you, obviously,
14 but do not know why this thing cannot be resolved.

15 I do not want to take away any action that you
16 have fro breach of contract, if you have an action for breach
17 of contract in Rockland County, but I do not think the world
18 is going to come to an end if that isn't decided at the
19 moment.

20 I would like to see a modus vivindi here by
21 which the Trustee and Pendell work out an arrangement here
22 so that the common danger -- the Buffalo Savings Bank --
23 they won't come in and push you both out. That is the
24 first thing, and I do not think we want that.

25 The second thing, on the question of one of

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2 those misunderstandings or disagreements, so far as I can
3 see the only problem is this \$500 which you claim -- and you
4 may be quite right because you were pushed by the Buffalo Bank
5 having to pay because IFC did not pay, you were damaged there.

6 MR. MILLER: I do not think that has ever been
7 a bone of contention.

8 THE COURT: I would think so. It seems perfectly
9 reasonable to me. There doesn't seem to be a question about
10 that.

11 The other question about the water and the sewer
12 and that sort of thing, the escrow payments, it seems to me
13 that what I would like to see both sides do is live up to
14 the terms of their obligations, not only what the wraparound
15 mortgage says but the wraparound mortgage provide that pay-
16 ments will be made monthly in escrow to cover the water and
17 sewer, that is what it says. I do not know why it shouldn't
18 be worked out.

19 MR. KATZ: Your Honor, the situation, so far as
20 my client is concerned -- I understand the Trustee has banks
21 and creditors and they are concerned about their position,
22 and I really sympathize with them.

23 THE COURT: Well I am glad you do. Sympathize
24 with me, too.

25 MR. KATZ: Unfortunately, your Honor, I have to

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2 sympathize with my client.

3 THE COURT: I know, but let us --

4 MR. KATZ: He has been put through an inordinate
5 amount of expense going back and forth in preparing papers.

6 THE COURT: Okay. If he thinks he has an action
7 against the Trustee because he has been put through some-
8 thing, I suppose it would be appropriate for him to bring
9 an action against the Trustee, if he wants to do it. I do
10 not know why it should be in Rockland County. Shouldn't
11 that be right here?

12 MR. KATZ: My client has an office in Rockland
13 County, he has a business there. I have an office there.
14 It is a lot less expensive and more convenient to do it there.

15 MR. MILLER: Your Honor, as long as we are going
16 to litigate the mortgage, which is the whole thrust of the
17 complaint in Rockland County --

18 THE COURT: Wait a minute, Mr. Miller. I am
19 not talking about litigating the mortgage. He has a claim
20 here that he says for \$500.

21 MR. MILLER: We agree to pay the five hundred,
22 your Honor.

23 THE COURT: Yes. Then he says he is damaged
24 because the delay led him to expense, I take it --

25 MR. KATZ: Yes.

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2 THE COURT: So in addition to the \$500 he got
3 a nasty letter from the Buffalo Bank saying, "You better pay
4 up or I'm going to move in on you" -- is that right? Put
5 that doesn't seem to me a very difficult lawsuit that has
6 to be tried.

7 My only question is where that should be tried.
8 But I do not think it is quite difficult.

B5 9 MR. KATZ: Well, it is not difficult, no, your
10 Honor, but again, your Honor, if they would agree to the
11 very simple solution -- this is is the solution which I
12 have always agreed to -- we would send the first mortgage
13 their check, and we would send them their check -- they would
14 get exactly the same amount under my theory as they would
15 under the wraparound mortgage, and they would not get one
16 less penny.

17 THE COURT: You say in Rockland County. Where
18 is your office located?

19 MR. KATZ: In Spring Valley.

20 THE COURT: Well, that isn't so vary far away.

21 What I would like to see here, gentlemen, is
22 this: They say they know they owe the \$500, whatever you
23 lost in interest, and I do not know whether it can be eliminated
24 from the lawsuit.

25 Then I would like to see if they agree on this

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2 procedure, that Mr. Schwarzfeld says that every month there
3 would be two checks, and you send one to Buffalo and keep
4 the other one. I don't see why that isn't a perfectly
5 sensible arrangement.

6 then, so far as the lawsuit is concerned, what
7 is left of it after you get the \$500, and the vexation that
8 you had, I would be perfectly willing to send that to a
9 referee, if you want to, and have that decided in a very short
10 time.

11 I think that is the sensible thing to do. I do
12 not think you should bother the Supreme Court at Rockland
13 County with this great matter!

14 MR. KATZ: The last solution that your Honor
15 suggested when we were here is that we would send two un-
16 certified checks to the attorney for the Trustee, who would
17 serve as the trustee agent.

18 THE COURT: I don't care about that detail.

19 MR. KATZ: Well, that is an important detail for
20 us, because we want to keep that away from the bankruptcy
21 court so far as further proceedings, and if there is a new
22 trustee --

23 THE COURT: You fellows cannot get away from it --
24 they are stuck in the bankruptcy court. They can't get
25 away from it.

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2 MR. KATZ: At any rate, this is the solution
3 which you suggested, which I was amenable to.

4 THE COURT: All right.

5 MR. KATZ: And then, of course, I want some con-
6 cession from them that they would, in theory, be agreeable
7 to reasonable counsel fees, if I can make a showing as to
8 that.

9 THE COURT: Well on counsel fees, I think that
10 is part of the aggravation and the irritation that Pendell
11 has suffered. They say, "We were given the runaround with
12 all this interest, and they made us hire counsel."

13 MR. KATZ: And we had to answer this motion for
14 a restraining notice, and for five months we have been under
15 a restraining order.

16 THE COURT: I do not think it is divisible. I
17 think Pendell is an aggrieved party. They say they have
18 suffered a lot of aggravation, and on top of that they had
19 to hire you.

20 MR. KATZ: Well, I tried not to give them too
21 much aggravation.

22 THE COURT: And they say they hired you and you
23 had to do some work, and that led to further aggravation --
24 I suppose it will come out in the evidence what the aggrava-
25 tion was, what the counsel fee was.

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2 It seems to me that that is all one ball of wax,
3 and my suggestion to you on that would be, if you could only
4 agree on the important thing, which is to keep these payments
5 going and keep the Buffalo Savings Bank off both your backs --

6 MR.KATZ: On that there has never been a problem
7 a problem.

8 THE COURT: That is right, and this problem seems
9 to be mine. I think the \$500 or whatever the loss of interest
10 is, you are going to get paid; so all that is left is the
11 aggravation of Pendell, and including your attorney's fee.
12 I do not think the Rockland County Supreme Court is going to
13 be fascinated by this.

14 It is my suggestion that if that is all that is
15 left, that that be referred to a referee here, let him hear
16 you and make a decision on it, and a recommendation. It
17 seems to me that would be the more sensible thing to do. That
18 might mean one more trip from Spring Valley.

19 Isn't that the sensible approach?

20 MR. MILLER: I think it is except that I do not
21 think your Honor heard or perhaps took cognizance of some-
22 thing that Mr. Katz said, which I want to make clear. The
23 proposal is that the checks be sent to me.

24 THE COURT: Well, I do not think he meant --

25 MR. MILLER: I am not in the mortgage service

1 mkds

26

2 business, your Honor; I am in the law business.

3 THE COURT: That is all right.

4 MR. MILLER: Mr. Katz said that is very important
5 to his client.

6 THE COURT: Why is that important?

7 MR. MILLER: You will have to ask him.

8 MR. KATZ: Because my client felt that he had
9 a bad experience with the Trustee before --

10 THE COURT: Oh, no.

11 MR. KATZ: -- and with his employees, and he
12 just doesn't want to -- for the same reason, perhaps, that
13 Buffalo doesn't want to deal with the Trustee.

14 THE COURT: I don't care about Buffalo.

15 MR. KATZ: There are certain facts in this case,
16 your Honor, which may color his situation.

17 My client called multiple times at the Trustee's
18 office -- it wasn't just a last minute thing -- multiple
19 times. Again, "Have you sent out the check?"

20 "Why haven't you sent out the check?"

21 "Yes, we sent out the check. Don't worry it
22 is signed; it's on the way."

23 THE COURT: I think the arrangement on that
24 should be that the Trustee will notify you by -- what will
25 you do with the checks -- send it with a covering letter?

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2 MR. MILLER: A copy of the covering letter.

3 THE COURT: With a copy of the covering letter
4 to Pendell so that they do not have to chase you.

5 I think that is fair.

6 MR. KATZ: If the attorney for the Trustee agrees
7 to the concept of the \$500 and the concept of reasonable
8 attorneys' fees.

B6 9 THE COURT: No, that is something that has to
10 be tried by the referee.

11 You talk about this, Mr. Katz, but the only way
12 that attorneys' fees come into this, in my opinion -- it is
13 not a question of Pendell's aggravation and expense.

14 MR. KATZ: Well, my client --

15 THE COURT: It is all one ball of wax, and it
16 has to be handled that way.

17 MR. KATZ: Well, my client feels he is foregoing
18 substantial legal rights by not prosecuting this action in
19 the Supreme Court in Rockland County.

20 THE COURT: Well if he feels that way, all right,
21 you will have to take that action, but I think it is sort
22 of silly myself.

23 MR. KATZ: I did not make an argument on the
24 merits of this case, your Honor.

25 THE COURT: Why don't you talk to your client

1 mkds
2 again and tell him what happened here, and tell him that I
3 will be very happy if the problem -- I can understand his
4 aggravation and the expense that he has been put to by the
5 acts of the Trustee, and I would be happy to make an arrange-
6 ment whereby that could be heard and tried by the referee
7 here, and see how we come out of it. But I cannot split it
8 up.

9 MR. KATZ: No. I am just wondering what the
10 issue would be -- the amount of attorneys' fees or the con-
11 cept whether he is entitled to attorneys' fees.

12 THE COURT: I don't know. That would be up to
13 the evidence which was introduced and what the law was. I
14 am not prepared to decide that, but otherwise the only thing
15 I can do -- and I don't want to do it; I don't think, in
16 the first place, that the Rockland County Supreme Court is
17 going to be interested in this case; and, secondly, I don't
18 know why this is necessary.

19 MR. KATZ: It is necessary -- well, first of all,
20 it is proper, because my client has a legal right to prosecute
21 the case.

22 I have indicated in my brief, and I have a new
23 case that I found in the Southern District, decided by Judge
24 Werker, which reconfirms our position.

25 THE COURT: All right. I wish you would do that,

1 mkds

2 and if that doesn't work out, you ought to submit a brief
3 indicating that this is not practical or that it is contrary
4 to law -- you may submit a brief and give the Trustee an
5 opportunity to answer it.

6 Then if you convince me that I should allow you
7 to sue in the Supreme Court in Rockland County, I will allow
8 you to sue in the Supreme Court in Rockland County, but I
9 think you are wasting a lot of time and increasing Pendell's
10 aggravation, to say nothing of increasing the Trustee's
11 aggravation, too.

12 MR. KATZ: Well, I will take up your suggestion,
13 your Honor, and speak to my client about it.

14 THE COURT: Will you?

15 MR. KATZ: Yes, I will.

16 THE COURT: Okay. I think that is the most
17 sensible thing to do.

18 Is there anything immediate that we need to do?

19 I should ask the gentlemen in the back row, do
20 you have any objection to this arrangement?

21 MR. HORWITZ: No objection.

22 MR. HAFT: No objection.

23 MR. KIRKLAND: No objection.

24 THE COURT: And if you are worried about payment
25 being made --

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30

2 MR. MILLER: No, I should also like to mention
3 this, your Honor crystalized and distilled the issue down
4 to really a matter of attorney's fees, and any other aggra-
5 vation --

6 MR. KATZ: That is not the case.

7 THE COURT: I don't want to prejudge Mr. Katz'
8 case on that. He says there was other aggravation, that
9 attorney's fees is one part of it.

10 MR. MILLER: The only matter that I want to bring
11 your Honor's attention to is that since November 1974, roughly
12 14 or 15 months, the Trustee hasn't received his portion
13 of the check on this mortgage.

14 THE COURT: Right.

15 MR. MILLER: Nor has he received any interest
16 because, as Mr. Katz stated earlier, there was a condition
17 attached to paying it, which was in effect that we agree
18 to unwrap the wrap.

19 MR. KATZ: That is not the case.

20 MR. MILLER: That we agree not to prosecute the
21 foreclosure action --

22 MR. KATZ: That is right.

23 MR. MILLER: -- which basically is the same
24 thing, your Honor.

25 The only way that the Trustee can protect himself

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31

2 is as to foreclosure. So I just want to point out that
3 the Trustee, without prejudice to whatever happens with
4 Mr. Katz when he comes back, because the Trustee has certain
5 claims here, too, that there is certain injury, and it con-
6 tinues.

7 THE COURT: Well, everybody is aggravated, I
8 can understand that.

9 MR. KATZ: The main thing, your Honor, is that
10 we have insured that the mortgage is satisfied for 15 months
11 without fail on time.

12 THE COURT: Well I am asking them to send you
13 a copy of the letter so that you will know -- a copy to
14 Jaytee Pendell -- not a copy to you but a copy to Jaytee
15 Pendell. I will ask the Trustee to do that. These checks
16 are obviously not going to be to any named attorney in this
17 big law firm; they should go to the Investors Funding where
18 their office is, 630 Fifth Avenue.

19 Can you think of anybody who would be handling
20 it?

21 MR. MILLER: Yes, we have attached the affidavit
22 of special counsel. You are speaking of in Pennsylvania?

23 THE COURT: No, here, when the checks come in.

24 MR. MILLER: It will go to the Mortgage Servicing
25 Department of Investors Funding. I will ask the Trustee for

1 mkds

32

2 name of an individual.

3 THE COURT: Give Mr. Katz the name of a particu-
4 lar individual so that --

5 MR. MILLER: So that they would send it to his
6 attention.

7 THE COURT: -- so that he knows it will be taken
8 care of, so that there will be no pushing around.

9 MR. MILLER: I will find that out.

10 THE COURT: Okay.

11 MR. MILLER: I cannot give you a name now.

12 THE COURT: Very well.

13 Now I will give you an opportunity to work this
14 out -- see if you cannot work this out. I will put this
15 matter over again, and see if you can't work it out.

16 And also, if you want to give me a memor of law --

17 MR. KATZ: Well, I did submit a very extensive
18 brief.

19 THE COURT: I beg your pardon?

20 MR. KATZ: I did submit a very extensive brief
21 in my opposition papers. I would mostly rest on that -- and
22 I will give you the new case in the Southern District.

B7 23 THE COURT: Yes. Give me the new case in the
24 Southern District -- just give me two or three pages on it,
25 and I will ask them if they want to go into the law, whether

1 mkds

2 it should be tried in Rockland County.

3 I think the other thing is more practical.

4 You discuss it with your client.

5 MR. KATZ: Okay, your Honor.

6 THE COURT: Would it be appropriate if we then
7 put this over for two weeks and see how you get along?

8 MR. MILLER: Would that be about February 2 --
9 is that satisfactory?

10 THE COURT: Yes.

11 MR. MILLER: That is fine, your Honor.

12 MR. KATZ: Can you make it three weeks, your
13 Honor?

14 THE COURT: Would you rather have it three weeks?

15 MR. KATZ: Yes.

16 MR. MILLER: I have a personal problem: I will
17 be away.

18 THE COURT: You will be away at that time.

19 MR. MILLER: The week following that, and the
20 following week is a holiday, your Honor -- I want to tell
21 your Honor about this in advance -- it is Washington's Birth-
22 day.

23 THE COURT: That is not being celebrated on
24 the 22nd.

25 MR. MILLER: No, on Monday, the 16th.

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2 THE COURT: If I put this over will somebody
3 else from the Trustee's office then be here?

4 MR. MILLER: I think Mr. Schwarzfeld.

5 (Mr. Miller confers with Mr. Schwarzfeld off
6 the record.)

7 MR. MILLER: He won't be available either.

8 MR. SCHWARZFELD: I have a deposition out of
9 town, your Honor.

10 MR. MILLER: On the 9th, your Honor, we would
11 be available -- Mr. Schwarzfeld will be here.

12 THE COURT: February 9th, would that be all
13 right with you?

14 MR KATZ: Yes.

15 THE COURT: All right, let us put it down for
16 February 9th.

17 MR. MILLER: Thank you, your Honor.

18 THE COURT: All right, gentlemen.

19 Now while you are here I would like to say one
20 thing: I am starting quite a long multi-defendant criminal
21 trial tomorrow, and I have a problem. My problem is that
22 a week from Wednesday I have to go out to San Diego because
23 I am chairman of the Judicial Conference Committee of the
24 United States on the Criminal Justice Act, which means that
25 this long trial that I am starting I won't be able to sit